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No. 00-347

IN THE

Supreme Court of the United States

THE WHARF (HOLDINGS) LIMITED, a Hong Kong company; WHARF COMMUNICATIONS INVESTMENTS LIMITED, a Hong Kong company; and STEPHEN NG, a Hong Kong citizen,

Petitioners,

v.

UNITED INTERNATIONAL HOLDINGS, INC., a Delaware corporation; and UIH ASIA INVESTMENT CO., a Colorado general partnership,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

JOINT APPENDIX

VOLUME II OF V
APPENDICES BD TO CR

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PETITION FOR WRIT OF CERTIORARI FILED SEPTEMBER 5, 2000
CERTIORARI GRANTED NOVEMBER 6, 2000

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Excerpts from Deposition Testimony of S. Ng

March 3, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 3725-3885; Transcript 1746:1-58; 1749:1-38; 1756:1-37; 1757:1-28)

Excerpts from Deposition Testimony of S. Ng
March 3, 1997
U.S. District Court for the District of Colorado
(Aplt. App. 3725-3885; Transcript 1746:1-58;
1749:1-38; 1756:1-37; 1757:1-28)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

UNITED INTERNATIONAL HOLDINGS, INC., et al.,	)	
Plaintiffs	)	
vs.	)	94 K 2560
THE WHARF HOLDINGS LIMITED, et al.,	)	
Defendants.	)	

TRIAL TO JURY - DAY 10
EXCERPTS OF DEPOSITION TESTIMONY
OF STEPHEN NG. - PAGE 1746

Proceedings held before the HONORABLE JOHN L. KANE, JR., U.S. District Judge, for the District of Colorado, beginning at 9:07 a.m. on the 3rd day of March, 1997, in Courtroom C-401, United States Courthouse, Denver, Colorado.

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Proceedings recorded by electronic sound recording; transcript produced by transcription service.

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PROCEEDINGS

(Whereupon, a portion of the video deposition of Stephen Ng was played for the jury.)

Q Please state your name and your business address.

A My name is Stephen Ng. My business address is Wharf Cable Tower, Number 9, Hoi Shing Road, Tsuen Wan, Hong Kong.

Q Tell me if you will, please, the positions you hold today with the various Wharf entities.

A I am today Chairman and Managing Director of Wharf Cable, Limited. I am Chairman and President of Wharf Communications Investments, Limited. And I am Deputy Chairman and Managing Director of the Wharf Holdings, Limited.

(We're going to have to ask you to bear with us a little bit today. As you can tell--well, maybe you can't tell, but Mr. Ng has a head cold of some severity, and so we may have to break with a little more frequency just so that he can take water and try and make himself feel a little better.)

A I apologize for that. I'm not well. And so if I do lapse into loss of concentration from time to time, bear with me, please.

Q As long as you don't lapse into a coma, we'll be okay. But if you do need a break, just say so and we'll accommodate you.

Have you ever had your deposition taken before?

A No, never.

Q Tell me, if you will, please, with respect to your present positions, I missed some of that. Which boards of directors are you on now? Are you on the boards of directors of Wharf Communications?

A Yes, I am.

Q And you're the Chairman of that board now?

A Yes, I am.

Q And you're the Chief Executive Officer?

A President.

Q President. And are you Chairman of the Board of Wharf Cable?

A Yes, I am.

Q And you're president as well?

A I'm Managing Director.

Q Who is the president?

A There is no president of Wharf Cable, Limited.

Q So you're the Chief Executive Officer of that company now?

A My title is Managing Director.

Q And what about the company called Wheelock; do you have any positions with Wheelock?

A Which Wheelock?

Q Well, which one is the one that owns Wharf Holdings, or a portion of Wharf Holdings?

A If--

Q Well, let me ask it a different way. Tell me what positions you hold in various Wheelock entities.

A There is a company, if you're referring to the company that holds the Wharf Holdings, Limited, the public is called Wheelock and Company, Limited, and I'm a director of that company.

Q Is that a managing director or just a director?

A A director.

Q Do you have any executive responsibilities?

A No, I don't.

Q Altogether, what is your present salary from the various Wharf related entities?

A My present salary from all those companies would be about 1.5 million Hong Kong dollars.

Q And do you have any stock options or other plans that you'd get other kind of compensation?

A Yes, I do.

Q And could you describe those, please?

A I have stock options in Wheelock and Company, Limited. I also have stock options in the Wharf Holdings, Limited. And I receive bonuses.

Q And so with respect to your stock option plans, does that give you the right to exercise certain options every year with respect to stock of Wharf related companies?

A The stock option plan awards stock and there are usually vesting periods, and when the option is vested, then I get the right to subscribe.

Q Let me ask you about the period from 1991 to 1993. What were your positions with the Wharf entities at that period of time?

A 1991 to 1993? I was Managing Director of the Wharf Holdings, Limited. This is from memory. And I was President of Wharf Communications Investments, Limited. And when Wharf Cable, Limited was formed sometime in 1992, I became its Managing Director.

Q And were you on the boards of directors of any of those entities?

A I believe I was.

Q On Wharf Holdings?

A Yes.

Q During the 1991-1993 time period?

A Yes.

Q Is that also true for 1994?

A Yes.

Q And for WCIL, you were on the board of Wharf Communications Investments, Limited?

A I'm sorry?

Q Were you on the board of directors of Wharf Communications Investments, Limited?

(It's now '91-'93?)

Q '91-'93.

A I believe I was.

Q And also in '94?

A I believe I was.

Q And with respect to Wharf Cable, I take it if you were Managing Director, you were on the board of directors there for '91-'93?

A I was, but Wharf Cable, Limited wasn't formed until 1992.

Q Okay. And in 1994, were you on the board?

A Yes, I was.

Q Now, you got a promotion in 1993 to a new position. What was that position?

A Remind me what promotion.

Q Well, I'm asking. In the middle of 1993, did you get a new title, a new position, with any of the Wharf entities, do you recall?

A You'll need to remind me.

Q You just don't remember any?

A No.

Q So to the best of your knowledge, all through 1993, you were the Managing Director of Wharf Holdings?

A Can you ask the question again?

Q The best you can recall, all through 1993, you were the Managing Director of Wharf Holdings?

A Yes, I was.

Q And were you the Managing Director of Wharf Holdings in 1994?

A Yes, I was.

Q Did you become Vice-Chairman of Wharf Holdings in 1994?

A I became Deputy Chairman of the Wharf Holdings, Limited in 1994.

Q Now, describe for me, if you will, what your duties were as managing director of Wharf Holdings. Generally, what kind of things did you do in that capacity and who did you report to?

A As Managing Director of the Wharf Holdings, Limited, I had Board duties and I have executive duties. My executive duties are primarily those related to the business of Wharf Communications Investments, Limited and its subsidiaries. And my board duties related to the Wharf Holdings, Limited and all of its subsidiaries.

Q But tell me generally what kind of duties you had; what did you do?

A Board duties would be board duties you would normally expect, policy, direction, results. Executive duties would relate to the running of the businesses, and that's always back to the business.

Q Who did you report to at Wharf Holdings?

A The Chairman.

Q And during the period of 1991 to 1994, that would have been Mr. Woo?

A During the period of 1991 to 1994, it was Mr. Peter Woo.

Q And after Mr. Woo, it became Mr. Li; is that correct?

A When Mr. Woo stepped down in 1994, Mr. Li, Gonzaga Li, became Chairman.

Q And then you reported to him?

A And then I reported to him, yes.

Q So during the period 1991 to 1994, you were the number two man at Wharf Holdings; is that correct?

A That is not correct; I was not.

Q Who was the number two man?

A The Deputy Chairman was the number two man.

Q Who was that?

A That was Mr. Gonzaga Li, G-o-n-z-a-g-a.

Q And who did Mr. Li report to?

A I believe he reported to the Chairman, Mr. Peter Woo.

Q But you didn't report to Mr. Li?

A No, I did not.

Q In your capacity with Wharf Communications, who did you report to there?

A I reported to the Chairman of Wharf Communications?

Q Which was who?

A Which was Mr. Peter Woo.

Q And that was the entire period from 1991 to 1994?

A That is correct.

Q And what again was your title with Wharf Communications at that time?

A I was President.

Q And who reported to you at Wharf Communications?

A Many people.

Q Well, without going through all the names, roughly how many people reported to you?

A Directly report, you mean?

Q Yes, direct reporting relationship.

A In Wharf Communications itself, about six people reported to me directly.

Q Would Mr. Fung have been one of those people?

A Mr.--

Q Emil Fung.

A Mr. Emil Fung was one of those people.

Q Now, in your capacity with Wharf Cable, you were President of Wharf Cable; is that right?

A I was Managing Director--I am Managing Director.

Q And you still are?

A Yes, sir.

Q And who did you report to at Wharf Cable?

A I reported to the Chairman of Wharf Cable.

Q Which was?

A Mr. Peter Woo.

Q During the period of 1991 to 1994?

A That is correct.

Q Describe for me generally, if you will, what your duties and responsibilities were with respect to cable T.V. for Wharf in the 1991 period of time?

A In 1991, the Wharf group of companies was interested to obtain a license from the Hong Kong government to build and operate a cable T.V. system in Hong Kong, and I was responsible for leading the team to undertake that task.

Q And how did you get that responsibility?

A I was assigned by the company to do so.

Q Is that Mr. Woo who appointed you?

A Yes, Mr. Woo appointed me.

Q Was there any formal board resolution that you're aware of?

A I don't remember.

Q So you were appointed to lead a team. How large was your team at the time?

A At the beginning, a team of one.

Q That was you?

A Yes, sir.

Q Okay. And during the 1991 period, how large did the team grow?

A It grew to maybe about eight or ten people, part-time people and full-time people.

Q These were people that were already working at Wharf?

A No, they were not. They were part-time consultants.

Q Who were they?

A They included people like Yvonne Sun Siu, Melvyn Sears, Franke Bateson, Alan Burke, and so forth.

Q And your charge at that time was to do what?

A Was to get a license.

Q Were you given any further direction, or any specific direction as to what you would have to do to get that license?

A No, my charge was to get a license, and it was up to me to recommend how to get a license.

Q Had you been involved in the effort with respect to the Hong Kong Cable Consortium, I believe it's called, or Hong Kong Cable Company?

A I believe you're referring to Hong Kong Cable Communications, Limited.

Q A group of companies that tried to get a cable T.V. license in the late Eighties or early Nineties in Hong Kong?

A That would have been Hong Kong Cable Communications, Limited.

Q Did you have any role with respect to that?

A Yes, I did.

Q What was your role with respect to that group?

A I was the director of Hong Kong Cable Communications, Limited.

Q Did you have any managing responsibilities?

A For a period, I did.

Q What were those managing responsibilities?

A I was, for a short period, responsible for putting together the programming team for Hong Kong Cable Communications, Limited.

Q Had you had any background in television or in cable prior to that time?

A No, I did not have any direct background.

Q Did you have any indirect background?

A In related media and communications businesses.

Q What was that?

A Advertising.

Q For who?

A For the agency in Hong Kong.

Q What was the name of it?

A Ling, McCann, Erickson.

Q And what kind of work did you do for them?

A Media and account service.

Q And so when did you leave them?

A 1980.

Q Between 1980 and 1988, did you have any experience in the television or cable industry?

A I continued from time to time to play a role in the communication side, but on the client side.

Q Generally, what kind of things were you doing?

A Advertising, promotion.

Q Then you did get some responsibility with respect to this--is it okay if I call it HKCC?

A Sure.

Q Were you Wharf's primary representative on the HKCC?

A I was one of Wharf's primary representatives.

Q Who were the others?

A For a period, Mr. Peter Woo was Chairman and Chief Executive, and he was obviously a primary representative, and John Hung was also a primary representative.

Q These are the representatives from Wharf?

A That is correct.

Q And there were representatives from other companies as well?

A That is correct.

Q Now, you say it was your responsibility when you became in charge of getting a cable license for Wharf, to make recommendations as to how to do that; right?

A This was in 1991?

Q Yes, I'm in 1991.

A That is correct.

Q Okay. Generally, what kind of recommendations did you make?

A Generally, what kind of recommendations did I make?

Q Right.

A Generally, I recommended that we needed to put together a proposal that would satisfy the government.

Q And what were going to be the elements of that?

A Network, programming and marketing being the main elements.

Q Okay.

A And finance.

Q So you had the four main elements laid out. Did you have a plan in the beginning as to how you were going to put those elements together?

A Yes, that plan developed over time.

Q Who did you work with primarily in developing that plan?

A I worked with the people in my team.

Q Namely?

A Yvonne Sun Siu, Melvyn Sears, Franke Bateson, Alan Burke, later Emil Fung, Vince Lam, and so forth.

Q Going into 1992, generally describe for me what your responsibilities, just generally what your responsibilities were with respect to getting the cable T.V. franchise?

A In 1992, my responsibilities continued to be to successfully get a license, a cable T.V. license for the Wharf group of companies. And in that process, I was also responsible for shaping the regulatory environment which would govern the cable T.V. license.

Q And that is up to the time of the bid, that was generally the kinds of things you were doing, or even after the bid?

A Even after the bid.

Q Okay. Did your responsibilities change after the bid in any way?

A My responsibilities probably didn't change. The emphasis changed.

Q Can you describe that?

A All along, in parallel with bidding for the license, we were preparing to implement the license. And subsequent to the submission, the implementation aspects took more emphasis.

Q And then after implementation, were you still in charge of the cable T.V. venture?

A After implementation?

Q Well, after--once you got the station launched.

A Yes.

Q And did your responsibilities change at that time?

A No, my responsibilities did not change.

Q Today, are you still in charge of the cable T.V. venture?

A Today, I am in charge of the cable T.V. venture.

Q And have you been in charge of the cable T.V. venture regularly since 1991?

A If you include license and bidding as part of the venture, yes.

Q And during that entire period of time, at least through 1994, you reported directly to Mr. Peter Woo?

A Yes.

Q And no one else?

A No one else.

Q Let me hand you what I've marked as Exhibit 2610. It's a document given to us yesterday by your counsel, March 25, 1988 letter with some documents attached to it relating to description of duties for Wharf Holdings. Would you identify that for us, please?

A Right. What would you like me to do with it?

Q Well, tell me what it is.

A This appears to be a circular written to the directors on the board of the Wharf Holdings, Limited by the Secretary of the board and of the company, and the caption says Appointment of Chief Executive and Managing Directors, and two resolutions--sorry, actually a total of five resolutions placed in two groupings were circulated for the Director's approval, and it looks like those resolutions were duly approved by the board. Would you like me to read the resolutions?

Q No, that's not necessary. Look at the third page of the document, if you will. Does that contain an accurate description of the duties and responsibilities of the Managing Directors?

A I'm reading the page.

(Pause.)

A I have no reason to believe otherwise.

Q Having been the Managing Director, does it sound to you consistent with your understanding of what your responsibilities and duties were?

A I see no such evidence.

Q You see no such evidence that it's consistent or inconsistent?

A Inconsistent.

Q Inconsistent. Okay, so essentially, this is what you did as Managing Director; is that correct?

A My powers as Managing Director are governed by this particular article of association with the company.

Q Let me ask you about NYNEX. You're familiar with NYNEX Company?

A Yes, I'm familiar with the name NYNEX.

Q Tell me some background, if you will, as to what Wharf's interest was in having NYNEX be a partner in the cable venture, how that started and what your interest was in NYNEX.

A NYNEX? First of all, I understand NYNEX as one of several regional telephone companies in the U.S. And then I understood some of these regional telephone companies were interested in investing in cable T.V. projects in Asia in Hong Kong.

I had come to know the NYNEX representatives in Hong Kong, and we started a dialogue about the possible interest of NYNEX investing with our group to build a cable television system in Hong Kong, with the capability to offer telecommunication services as well. And that discussion started in--the dialogue started in 1992, and continued into--sorry, let me correct myself. The dialogue started in 1991, and continued into 1992.

Q All right. So you were interested in possibly having NYNEX come in in the cable and possibly to be a telecom partner as well?

A Yes, we were.

Q And you viewed their expertise primarily in the telecom business?

A And cable T.V.

Q Both?

A Yes.

Q And was having NYNEX a member of your group for the cable T.V. project important to Wharf?

A Having a strong telecom partner was important.

Q Why was that?

A Because this was very much a telecom project as well, and we have a major competitor in the telecom sector.

Q Who is that?

A Hong Kong Telecom.

Q So you wanted to get a strong telecom partner to go into your cable venture?

A That is correct.

Q And NYNEX was viewed as that strong partner?

A That is correct.

Q What discussions were you having at the time about the need for a telecom partner?

A I don't remember any specific discussions. The general discussion which was being conducted I guess in 1991-1992 time frame was we were looking for a telecom co-investor.

Q And that would have been NYNEX at the time; right?

A That is correct.

Q And when you say a telecom co-investor, what do you mean by that?

A A company that would have a reputation and track record in telecommunications and who would co-invest with Wharf in the cable T.V. project.

Q Was there a difference between, in your mind, between a telecom partner and a cable T.V. partner?

A My immediate reaction to that question is a so-called telecom partner would come from the telecommunications industry, and a cable T.V. partner would come from the cable T.V. industry.

Q Mr. Ng, tell me, if you can recall, how you first got in touch with UIH, or how they got in touch with you.

A I generally recall that the first contact was made by UIH with Wharf, and that was sometime after Hong Kong Cable Communications, Limited decided not to continue with the cable T.V. project in Hong Kong, and when Wharf was looking to start a new bid for the license. And that's my recollection of the first contact between the two companies.

Q Had you ever heard of UIH before, before they contacted you?

A I do not remember prior to that first contact ever hearing of UIH.

Q All right. Look over, if you will--well, let me ask you generally, in August, 1992 or September, 1992, can you recall anything about Wharf's intent with respect to a relationship with UIH in the cable T.V. venture?

A Can I remember anything?

Q Yeah, with respect to Wharf's intent as to UIH prior to the bid in 1992.

A In August, 1992, Wharf was contemplating entering into agreement with UIH and with NYNEX to submit a joint bid for the cable T.V. license in Hong Kong.

Q Well, you do remember that the bid makes reference, particularly in the corporate and finance section, to UIH and NYNEX, doesn't it?

A I remember making reference.

Q All right. Was that a form of alliance?

A I don't remember what the bid says.

Q When is the last time you read the bid?

A 1992.

Q Well, did you understand at the time of the bid, that Wharf had an alliance with UIH and NYNEX?

A At the time of the bid submission, namely September 30th, 1992?

Q Yes.

A Yes, I understand we had an alliance with UIH and NYNEX.

Q Did you understand that you had a partnership with UIH and NYNEX at that time?

A What is a partnership?

Q Was it your understanding that you had a partnership with UIH and NYNEX at that time?

A My understanding, yes, we had a partnership.

Q What was the basis of that partnership?

A There was a technical cooperation agreement between Wharf Cable, Limited and UIH and I believe a parallel agreement between Wharf Cable, Limited and NYNEX.

Q And you believed that that technical cooperation agreement formed the basis of your partnership with two entities; is that right?

A Yes, that is right.

Q Is there anything else that formed the basis of that partnership with those two entities?

A Also the intent for the parties to discuss possible co-investment.

Q So you say that the parties had an intent to discuss possible co-investment at the time of the bid?

A That is correct.

Q Was that Wharf's intent at the time?

A That was Wharf's intent at the time.

Q Now, you'll notice in this corporate and finance section, which is 2057, there is a section regarding United International Holdings. You're welcome to turn to W-01459, the section begins, "United International Holdings, Inc."

A WC?

Q WC-01459.

A Thank you.

Q Did you review the United International Holdings, Inc. material before it was submitted with the bid?

A I remember reviewing some draft of it. I don't remember whether I reviewed the final version.

Q Whose responsibility would it have been to have reviewed the final version before it was attached to the bid?

A The bid writer.

Q And who, again, was the bid writer?

A The bid writer's name is--what's his name--he's a professional bid writer. His name slips me.

Q Is he a Wharf employee?

A No, he is not.

Q You hired an outside service?

A Yes, we did.

Q So to the best of your knowledge, was anything contained in this corporate finance section not true?

A I'm sorry?

Q To the best of your knowledge, was anything contained in this corporate and finance section untrue?

A Not having reviewed it, I don't think I can comment on that question. But I have no reason to believe any part of it would be untrue.

Q And that would include the portions relating to United International Holdings?

A I have no reason to believe anything that is written in here in relation to United International Holdings, Inc. would be untrue.

Q Look at the next one where it says, "Technical cooperation agreements are expected to be executed this week between Wharf Communications and NYNEX/UIH respectively." Do you see that?

A I do.

Q Now, do you recall how it is that there would be a technical cooperation agreement with UIH?

A No, I don't recall.

Q Up to this point in time, the notes had reflected only a technical cooperation agreement with NYNEX; right?

A Up to the previous week, yes.

Q Now it says with UIH as well. Do you recall what happened that now there was going to be one with UIH?

A I don't recall.

Q Did you ever discuss with any UIH representative, the technical cooperation agreement in the September, '92 time period?

A I don't recall.

Q Just to be sure, did you ever discuss the subject with Mr. Schneider?

A I don't recall.

Q Mr. Fries?

A I do not recall.

Q Mr. Clive Ng?

A I don't recall.

Q Sonjia Norman?

A I cannot remember.

Q Mr. Pittman?

A I cannot remember.

Q Mr. D'Ottavio?

A I cannot remember.

Q Do you remember ever discussing a technical cooperation with any of--start again. Do you recall discussing a technical cooperation agreement with any of those people at any time before or after the September 30th bid?

A I can't remember.

Q Now, I showed you earlier the technical cooperation agreement that was signed by you; correct?

A Yes, you showed me it.

Q If you could look at Exhibit 2059? It would be in this stack. 2059.

Now, prior to signing it, and I apologize if I've asked you some of these questions, but I just want to make sure, prior to signing it, do you remember reading it?

A I don't remember.

Q Do you remember having any of the terms explained to you?

A I don't remember.

Q Did you have authority to sign that agreement?

A Did I have authority to sign the agreement at the time of signing?

Q Correct.

A I don't remember.

Q Would you have signed it without authority?

A I could have.

Q When you say you could have, why would you sign something without authority to sign it?

A If I had reasonable expectation that my action would be ratified subsequently.

Q Ratified by whom?

A By the necessary authority.

Q Okay. Now, do you know whether your signature on this was authorized at the time or whether it was ratified afterwards?

A I don't remember.

Q And who would have been the proper authority, if any, to ratify your signature on this document?

A The company.

Q Which company?

A Wharf Cable, Limited.

Q And when you signed this document, did you make any representations to UIH to the effect that you did not have authority to bind Wharf Cable?

A I don't remember.

Q Did you indicate to them that your authority was subject to later ratification?

A I don't remember.

Q Do you believe that your authority on this document did in fact bind Wharf Cable?

A I'm sorry, the question, please?

Q Did you believe that by signing this technical cooperation agreement, you did in fact bind Wharf Cable to obligations under this agreement?

A Did I believe?

Q Yes.

A I don't remember.

Q You don't remember if you believed you were binding Wharf Cable?

A I don't remember.

Q Did you at any time believe that Wharf Cable was bound under the terms of this agreement?

A I'm sorry, the question was?

Q Did you at any time believe that Wharf Cable was bound under the terms of this agreement?

A Did I at any time?

Q Right, at any time.

A I don't remember.

Q What was the intent of Wharf at the time it entered into the TCA?

A I don't remember.

Q Did Wharf have any intent of ever having services provides it under the TCA?

A Ask the question again, please.

Q Did Wharf have any intent of ever having services provided it under the TCA at the time it entered into the TCA?

A I don't remember.

Q What was your intent, your personal intent with respect to the TCA?

A I don't remember.

Q Now, the TCA was primarily negotiated by Mr. Fung; correct?

A I believe so.

Q Did he give you any description of what happened in the negotiations?

A I don't remember.

Q Do you recall the references in the bid document to the technical cooperation agreement?

A I recall references, but I don't recall the references.

Q Do you recall the technical cooperation agreement being attached to the bid?

A I don't remember.

Q Did you believe the technical cooperation agreement made UIH a strategic partner with Wharf?

A I don't remember.

Q You don't remember what you thought at the time?

A I don't remember what I thought at the time?

Q Is that what you're saying; you don't recall whether that made UIH and Wharf strategic partners?

A That wasn't your question, was it?

Q Okay, let me ask the question again. In 1992, did you believe that by virtue of the TCA, Wharf and UIH were strategic partners?

A In 1992, did I believe that by virtue of the TCA, Wharf and UIH were strategic partners?

Q Correct.

A Yes.

Q How is it that the TCA made Wharf and UIH strategic partners?

A Long-time partners.

Q Do you believe that UIH and Wharf had any intent of ever activating the TCA?

A I don't remember.

Q But you nevertheless believed it made them strategic partners?

A Yes.

Q How could they be strategic partners under the TCA if they didn't have an intent to activate the TCA?

(Whereupon, an objection was made; no foundation.)

A If they had no intent to activate the TCA?

Q Right. How could that make them strategic partners if they had no intent to activate the TCA?

(Whereupon, the same objection was made.)

A My question is did they have no intent?

Q Well, I'm asking you.

A I said I don't remember.

Q You just don't remember?

A I don't remember whether they had the intent.

Q You don't remember one way or another?

A I don't remember whether they had the intent.

Q Well, you testified a moment ago that the TCA made them strategic partners; right?

A Among other things, yes.

Q So you remember that?

A I remember--

Q You--is it your testimony that you recall the TCA made UIH and Wharf strategic partners?

(Whereupon, an objection was made; asked and answered.)

Q Is that your testimony?

(Whereupon, the same objection was made.)

A The TCA was a symbol of the strategic partnership.

Q What do you mean by that?

A Symbol is a sign, a sign of the partnership.

Q So you mean the partnership existed outside of the TCA and the TCA was just a symbol; is that right?

A The TCA was a symbol of the partnership. It doesn't necessarily exist outside of the TCA.

Q Was there anything about the TCA that bound Wharf to do anything?

A I'm sorry. Can you ask the question again?

Q Was Wharf bound to do anything under the TCA, to your knowledge?

(Whereupon, an objection was made; calls for a legal conclusion.)

A I'd have to review the document.

Q Did Wharf have any intent to do anything pursuant to the TCA?

A The question was?

Q Did Wharf have any intent to do anything under the TCA?

A I don't remember.

Q Did you ever discuss with UIH whether Wharf intended UIH to do anything under the TCA?

A The question was?

Q Did you ever discuss with UIH whether Wharf expected UIH to do anything pursuant to the TCA?

A I don't remember.

Q What discussions do you generally recall that you believe are symbolic of a strategic partnership between Wharf and UIH?

A Discussions relating to a possible investment.

Q Okay. And what do you remember about those discussions?

A I remember those discussions were carried out by Emil Fung on behalf of Wharf Cable.

Q And do you say that you were not a party to those discussions?

A I was not a direct party at that time.

Q And by that time, you mean prior to the bid in 1992?

A That is correct.

Q Look if you will, please, at Exhibit 2118-C. This is a December 17, 1993 letter from you to Mark Schneider. Look that over for a moment, please.

A Exhibit 2118-C?

Q Correct.

(Pause.)

Q Have you had a chance to review that?

A Yes, I have.

Q Okay. Now, at the bottom of that letter, you say you were not sure what position he is striving not to prejudice. Do you see that at the end of the second paragraph?

A I see that.

Q Did you understand that Mr. Schneider was trying to protect his claim that he had a right to invest in the Wharf Cable venture?

A Did I--

Q Did you understand that Mr. Schneider was trying to protect his claim that he had a right to invest in the Wharf Cable venture?

A I didn't know what he was trying to do.

Q Down at the next paragraph, the second to the last sentence says, "I appreciate your continued enthusiasm to develop the opportunity not withstanding that, but that does not alter the fact that my board had not and has not, as you know, approved any invitation for co-investment from any party." Do you see that?

A Yes, I do.

Q Now, as of the date of this letter, had any Wharf board been approached with a proposal that UIH become an investor?

A I don't remember.

Q Had you discussed with any Wharf board the possibility of UIH becoming an investor?

A I can't remember.

Q Look, if you will, at Exhibit 2119. 2119 is a December 30, 1993 letter from Mr. Schneider to you.

A 2119 is December 13--

Q I'm sorry. You're right. Exhibit 2120. Look at 2120, please.

(Pause.)

A What about 2120?

Q At the time of this letter, do you believe that UIH had a right to invest in Wharf Cable or in an entity owning Wharf Cable stock?

A At the time of this letter?

Q Correct.

A At no time did I believe UIH had a right to invest.

Q Well, let me ask you to look at another document here. Look at Exhibit 2061. So it was true that neither Wharf, nor to your knowledge UIH, envisaged the technical cooperation

agreement to govern your future relationship when you entered into it; right?

A It says you are, of course, right to say that we did not envisage the TCA governing our future relationship.

Q The second full paragraph on the April 29, 1994 letter from you to Mr. Schneider, Exhibit 2061.

MR. CHASE: Could you read my pending question, please?

(Whereupon, the pending question was read back.)

MR. CHASE: And why don't you read his answer? I'm sorry.

(Whereupon, the witness's answer was read back.)

Q So you did not envisage the TCA to govern your future relationship?

A What I'm saying is the letter says that.

Q Okay. And was that your understanding at the time you signed the TCA?

A That was the understanding at the time I signed this letter.

Q No, I'm asking what your understanding was at the time you signed the TCA?

A I don't remember. But I shouldn't be too different from what this says here.

Q At the time you signed the TCA, did you have any intent that the TCA would ever become an operative agreement between Wharf and UIH?

A I don't remember.

Q Why did you even bother entering into a technical cooperation agreement with UIH? What was the point of that?

A I don't remember why we entered into that technical cooperation agreement; presumably to enhance the bid.

Q To show the Hong Kong government that you had access to technical expertise in the area of cable television; right?

A Possibly.

Q Well, is that true or false?

A I don't remember.

Q You don't remember why you entered into the technical cooperation agreement with UIH?

A No.

Q Do you remember who it was that told UIH that for purposes of the bid, they would be presented as being a signatory of a technical cooperation agreement?

A I don't remember.

Q Do you remember how it was pitched to UIH that that's how Wharf was going to go for purposes of the bid?

A I don't remember.

Q Let me hand you what's been marked as Exhibit 2057, and this is a copy of the corporate and finance section from the bid. And I'm not going to ask you to read the entire thing, but let me just ask you a few questions.

First of all, if you'll look at the first page of the corporate and finance section, it's WC-01429; are you there? Now, when you say the commitment is backed not only by the full financial and managerial strengths of our company, but also by the experience and resources of our technical partners, NYNEX Network Systems Company and United International Holdings, Inc., what did you mean by that? How was UIH and NYNEX backing this commitment to this bid?

A I don't remember, but I can only deduce maybe as a result of the technical cooperation agreements.

Q So you believe it was the technical cooperation agreements that was being relied upon to say that UIH was backing this bid?

A That was one deduction, but I do not remember.

Q You're just deducing that now?

A Yes.

Q And that's even though you've testified you don't recall whether anybody ever had any intent to activate the cooperation agreements?

A Yes.

Q All right, let's go to the page that's 01433 where it talks about technical partners. Do you see that?

A Yes, I do.

Q And that does describe the technical cooperation agreements; right?

A Yes, it does.

Q Now, did anybody ever disclose to the Broadcast Authority that the technical cooperation agreements were never activated?

A I don't remember.

Q Did anybody ever disclose to the Broadcast Authority that it was the intent of the parties that the agreements never be activated?

(Whereupon, an objection was made; no foundation.)

A I don't remember.

Q Now, it indicates down under ownership structure that Wharf will consider the introduction at the appropriate time of NYNEX, UIH and other strategic partners as to co-investors purchase up to 40 per cent of the shares in CNCL; do you see that?

A Yes, I do. If Wharf Cable is successful in its license application.

Q Right. Okay. Now, is that a fair and accurate statement of the intent of Wharf at that time?

A Yes, it was.

Q That at an appropriate time, Wharf would consider the introduction of NYNEX, UIH and other strategic partners?

A Yes.

Q Well, what I'm trying to get at here is at the time of the bid, whether Wharf intended to consider at some future time admitting UIH and NYNEX, or whether at the time of the bid, Wharf actually intended to introduce as equity owners UIH and NYNEX.

A I think at that point in time, if my memory is correct, Wharf intended to introduce at the appropriate time NYNEX, UIH and other strategic partners as co-investors.

Q What was the appropriate time that Wharf considered?

A That was a matter for the companies to decide.

Q Let's look at Exhibit 2605. This is a memo that appears to be written in your handwriting to Melvyn Sears. I'd ask you to please look at that and confirm for me that that is your memo to Mr. Sears.

A It appears to be my memo to Mr. Sears.

Q Let me ask you about the implementation team. You told us about the bid team. Now, what did you expect the implementation team was going to do?

A I expected the implementation team to start pre-implementation work.

Q Go ahead. I'm sorry.

A To start pre-implementation work.

Q Of?

A Of--

Q Of the cable system?

A Of the cable system.

Q All right. And that would mean being able to hit the ground running when you got your license; right?

A Yes, among other things.

Q Well, what other things?

A To make sure we have an implementable plan.

Q Okay. I'm going to ask you to look at Paragraph 3 here where you indicate that Yvonne, Franke and Mr. Sears were not interested in being on the implementation team. Is that correct?

A Paragraph 3?

Q Yeah, Paragraph 3.

A That's what I said; that I have on more than one occasion asked you individually to consider staying on sometime in the implementation team, but I understand when I was advise of the reasons why you cannot, or cannot make a commitment to accept my invitation.

Q Okay. So they turned you down; right?

A They did not accept my invitation.

Q Did they tell you why?

A I think they did.

Q What were the reasons they did?

A I can vaguely remember because, in some cases because they did not want to live in Hong Kong.

Q Who expressed that desire?

A I think that would have been Mr. Sears and Mr. Bateson.

Q What about Ms. Siu; what was her reason for not wanting to be on the implementation team?

A Health.

Q Now, in the next paragraph, you invite them to participate in a transition to the implementation; do you see that?

A Yes, I do.

Q Did they agree to do that?

A I believe they did.

Q And then in the next paragraph, you say, "I see NYNEX and UIH actively participating in the implementation." Do you see that?

A Yes, I do.

Q Now, why NYNEX and UIH participating in the implementation?

A Why?

Q Yes.

A Because they were interested in participating in the implementation.

Q Were you interested in having them participate in the implementation?

A Yes, I was.

Q Why?

A Because I was interested in having them as long-time partners.

Q All right. What did you think they brought to the table in terms of their skills and services at this time?

A Their respective experiences and expertise.

Q Did you respect that?

A Sure I did.

Q With respect to UIH?

A Yes, I did.

Q And did you ask them to give you assistance with respect to this implementation?

A Yes, I did.

Q Who did you ask?

A I don't remember who I asked, but probably Mark Schneider.

Q And that would have been sometime prior to this October 2, 1992 date?

A It would be logical to conclude that it was before October 2, 1992.

Q What did you ask Mr. Schneider?

A I don't remember.

Q Well, generally what kind of services were you looking for from UIH in terms of implementation?

A Cable T.V. services.

Q Specifically personnel?

A Advice.

Q Okay. You were looking for personnel, weren't you?

A I was looking for manpower.

Q You were looking for assistance in recruiting additional manpower; right?

A I was doing that, too, I believe.

Q You were looking for assistance in developing a business plan; right?

A I'm not sure about that.

Q Well, you were also looking for assistance in somebody helping you design your network and your computer system; right?

A The computer system maybe. I'm not sure about the network.

Q You were looking for assistance with respect to procurement of important equipment, like decoders?

A Maybe.

Q You were, weren't you?

A I think yes, we were.

Q And these are the kinds of things you asked UIH to help you with; right?

A These are the kinds of things that UIH helped with.

Q Pursuant to your request; right?

A Presumably, but I don't remember the request.

Q All right. And what did you agree to do for UIH in return for that?

A I don't remember.

Q Did you offer anything to UIH in return for that?

A I do not remember.

Q Let me ask you to look at--I'm going to make this one 2606-A. This is a new exhibit. Let me hand you what's been marked as Exhibit 2606-A. It's a memo of October 6, 1992 from Dave D'Ottavio to you. I'd ask you to look this over and I'll ask you some questions about it.

A Okay. I will read it. 2606-A.

(Pause.)

A Right. What would you like me to do with it?

Q Okay, let me ask you some questions. First of all, do you recall receiving this?

A I don't, but it's got my handwriting on it.

Q Okay. So you have no doubt that you received it?

A I believe I received it.

Q Let's look at the schedule for Denver, Colorado. Let me see if I can find out specifically what you did here--what you did in Denver.

It indicates that you started the day at UIH offices; correct?

A On the 8th, yes.

Q Let's look at the 12:00 noon session, luncheon meeting with you, Gene Schneider, Bill Elsner, Mark Schneider, Dave D'ottavio, Mike Fries, Bill Hudon and Ellen Spangler. Do you remember that luncheon?

A I vaguely remember a luncheon.

Q Okay. And it indicates update on franchise application, discussed current business plan, overview of partnership; do you see that?

A Yes, I do.

Q Were those matters discussed at that luncheon?

A I don't remember.

Q Do you remember anything that was discussed at that luncheon?

A No.

Q It indicates 4:30 p.m., Vincent Dolen, COO. Was he a candidate for the chief operating officer position?

A I believe he was.

Q And how was he brought to your attention?

A The appointment was made by UIH.

Q Where did you interview him?

A In Denver.

Q Was it at the UIH office?

A I believe it was.

Q Was the luncheon at the UIH office?

A I believe it was.

Q Between 12:00 noon and 4:30 p.m., were you at the UIH office?

A I cannot remember.

Q Between that period of time, or during that period of time, did you have a conversation with Bill Elsner and Mark Schneider alone?

A I cannot remember.

Q Did you have a conversation on that day, or at any time while you were in Denver on this trip, with Bill Elsner regarding Wharf's needs with respect to implementation?

A I do not remember.

Q Did you make requests of Mr. Elsner?

A I do not remember.

Q Did you have a conversation with Mr. Elsner, or where Mr. Elsner was present, where UIH indicated its needs with respect to a right to invest in the Wharf project?

A Could you ask the question again?

MR. CHASE: Why don't you read that back.

(Whereupon, the pending question was read back.)

A I don't believe Mr. Elsner or anybody in UIH expressed a right to invest in Wharf Cable.

Q I don't think that was my question, but I'll ask it differently.

Did you have conversations, or a conversation, with UIH personnel at this time regarding a UIH right to invest in the Wharf Cable project?

(Whereupon, an objection was made; no foundation.)

A I don't remember anyone in UIH saying to me they have a right to invest in the project.

Q Did you have any conversations about the subject of a right to invest, obtaining a right to invest, having a right to invest, wishing for a right to invest, anything along those lines?

A I do not remember.

Q Do you remember the subject of a UIH investment in the Wharf project even being discussed on October 8th, or any time during that Denver trip?

A No, I don't.

Q Do you deny that you had those discussions?

A I do not deny that we had discussions, but I do not remember what was discussed.

Q Now, you know in the complaint, it's alleged that Wharf, through you, told UIH it would have an option to invest in the cable project; you're aware of that?

(Whereupon, an objection was made; no foundation.)

Q You're aware that that's what the complaint says?

(Whereupon, the same objection was made.)

A Yes.

Q Okay. Do you deny that?

A Deny what?

Q Deny that you told UIH it would have an option to invest in the Wharf Cable project?

A Categorically.

Q Pardon me?

A Categorically.

Q You categorically deny that? Do you remember any conversation where an option was discussed?

A Can you ask the question again, please?

Q Do you remember any conversations during this time period in Denver where the subject of an option was discussed?

A I recall discussions, but I don't recall what was discussed.

Q Do you recall whether the subject of an option was discussed?

A No, I do not.

Q Do you recall whether the subject of the UIH right to invest in the project was discussed?

A No, I do not recall.

Q So you say you recall discussions, but you don't recall what was discussed; right?

A That is correct.

Q Do you recall if there were any discussions relating to the possibility of a UIH equity interest in the Wharf Cable project?

A Can you please ask the question again?

MR. CHASE: Please read it back.

(Whereupon, the pending question was read back.)

A I do not recall any discussions.

Q Now, if you can't recall discussions, how can you recall that you categorically did not offer an option?

(Whereupon, an objection was made; mischaracterizes the witness's testimony.)

A If I cannot recall what discussions I had with a beautiful lady next door, I can still recall I did not promise to marry her.

Q Do you recall meeting in Mr. Elsner's office, or in the conference room next to his office?

A With whom?

Q Well, first of all, do you remember being in Mr. Elsner's office, or in a conference room adjacent to his office?

A I vaguely recall I was in Mr. Elsner's office.

Q All right. And do you recall in a conference room adjacent to his office?

A That I do not recall.

Q And do you recall Mr. Elsner being in his office when you were in his office?

A I think he was in his office.

Q Do you recall whether Mr. Mark Schneider was also there?

A I do not recall.

Q Do you remember what you talked about in Mr. Elsner's office?

A No, I don't.

Q If Mr. Elsner were to testify that he talked about partnership issues, would you deny that?

A I would not deny, but I would not confirm either. I cannot. I can't remember.

Q Just can't remember one way or the other?

A No, I cannot remember.

Q And did you talk to Gene Schneider while you were on this trip to Denver?

A I think I did. I think I saw him on this trip, and I would have spoken to him.

Q Do you remember what you spoke to him about?

A No, I don't.

Q Now, one of the things that you talked with about UIH on this trip was the kind of services you were going to need from UIH in terms of implementation; right?

A I don't remember clearly. I may have asked them for service.

Q Well, it certainly would be logical, given this is the time where you're planning your implementation team; right?

A Timing was probably right.

Q And did UIH ask from you any assurances with respect to its right to invest in the project?

(Whereupon, an objection was made; no foundation.)

A I don't remember they ever asked.

Q Did UIH indicate in any way what they expected or wanted in return for providing services?

A I don't remember.

Q Was there any discussion about how or whether UIH would be compensated for the services it was providing?

A I do not remember.

Q If a UIH representative were to testify that there were such discussions, would you deny that?

A I cannot confirm.

Q You can't confirm or deny?

A I cannot remember.

Q I'm going to change that question and make it a little bit broader. Is it fair to say you have no recollection about a proposed UIH right to invest during this trip to Denver?

A I have no recollection of the discussions held with UIH during this trip to Denver.

Q On that subject?

A Including on that subject.

Q So you have no recollection of any discussions?

A I have no recollection of what was discussed in those discussions.

Q Let me see if I understand your testimony. You recall there were discussions?

A There may have been discussions. I do not recall whether there were discussions or not. But if there were discussions, I do not remember what was discussed.

Q And this would pertain to any proposed or possible UIH right to invest in the cable project?

A That is correct.

Q Have you ever discussed with Mr. Mike Fries the subject of an option?

A I do not recall ever discussing with Mr. Fries the subject of an option, and I would not have participated in any discussion of an option.

Q What do you mean you would not have participated in any discussion?

A If Mr. Fries wanted to inquire about the possibility of an option in favor of UIH, I would have closed the discussion right there.

Q Do you recall doing so?

A I do not.

Q Do you recall ever discussing the subject of an option with a UIH representative?

A I do not recall ever discussing the subject of an option with a UIH representative.

Q Do you deny that there were discussions involving you with a UIH representative of an option at any time?

A I do not deny that I may have been present when the subject of an option may be raised by UIH, but I deny having ever participated in any discussion that may follow, if indeed this matter is raised, because if indeed the option issue was raised, I would have told the UIH representative that this was not negotiable, and there would be no discussion on this particular matter.

Q During this time, were you expecting or hoping that NYNEX would make a firm commitment?

A We were originally hoping NYNEX would make a firm commitment before the end of September.

Q And when that didn't happen, were you then hoping they would make a firm commitment as quickly after the end of September as possible?

A Yes, we were.

Q And the ball was essentially then in NYNEX's court; right?

A I think so.

Q So if NYNEX wanted to commit, they were in the deal; right?

A Subject to an agreement being closed.

Q Well, what would they be committing to if there wasn't an agreement to commit to?

A I don't remember whether by that time we had a finalized agreement.

Q Well, when you wanted NYNEX to commit, what did you want them to commit to?

A I don't remember what the terms of the agreement--of the draft agreement were.

Q But whatever it was, you wanted them to commit to it?

A I don't remember whether we got, by this time, we got as far as to have a final draft of the shareholder's agreement.

Q But as far as you were concerned, if NYNEX said they wanted to go with it, you were ready to do a deal with NYNEX.

A Subject to terms and conditions.

Q Did you, in the fall of 1992, consider it a reasonable likelihood that UIH would obtain a right to invest in the Wharf Cable project?

A I considered it reasonable for UIH to expect that an investment agreement would be negotiated, subject to terms and conditions being agreed between the parties, for UIH and NYNEX to jointly co-invest in Wharf Cable.

Q So in the fall of 1992, while you were receiving these services from UIH, you thought there was a fair chance a deal could be done subject to all board approvals and subject to somebody reaching an agreement on terms and conditions; is that what you're saying?

A I'd like you to ask the question again.

MR. CHASE: Read it back, please.

(Whereupon, the pending question was read back.)

A Subject to all of the parties reaching an agreement on terms and conditions.

Q Let me take it in small steps. In October, 1992 when UIH agreed to provide the implementation team it was providing, did you tell them what you just told me a few moments ago about a fair possibility of them being able to invest?

A I don't remember.

Q What did you tell them about the likelihood of their being able to invest?

A I don't remember.

Q What about in November and December, 1992, what did you tell them then about the likelihood of their being able to invest?

(Whereupon, an objection was made; no foundation.)

A I do not remember.

Q Did you tell them anything during those months about the likelihood of their being able to invest?

A I do not remember.

Q What about in the first quarter of 1993 when you were still using UIH's services, what did you tell them then about the likelihood of their being able to invest?

(Whereupon the same objection was made.)

A I do not remember.

Q Did you tell them it was only a fair possibility?

(Whereupon, the same objection was made, and objection that it mischaracterizes the witness's testimony.)

A I do not remember.

Q Did you talk to them at all during the last quarter of '92 about the likelihood that they would become investors in the Wharf Cable project?

A I do not remember.

Q You recall no discussion with any UIH representative in the last quarter of 1992 regarding the likelihood of UIH becoming an investor in the Wharf Cable project?

(Whereupon, an objection was made; asked and answered.)

Q Is that your testimony?

(Whereupon, the same objection was made.)

A I do not recall what was discussed in the discussions, if there were discussions.

Q And that it was your understanding of your relationship with UIH in the fall of 1992, that they were your strategic partner?

A If that's what the bid says, I have no reason to think otherwise.

Q Well, you used the phrase a moment ago that they were your strategic partner. And so my question to you is did you have authority to designate them as strategic partner for any purpose?

A For certain purposes, yes.

Q What purposes?

A For the same purpose as I designated CNNI--CNN, rather, a strategic partner.

Q And what purpose was that?

A It's a long-term partnership arrangement.

Q So you were in partnership with CNN and you were in partnership with UIH; is that right?

A That is correct.

Q And what purposes didn't you have authority to designate them as strategic partner?

A To invite them to invest in the project, for instance.

Q All right. And why is it that you didn't have that authority, but you had the authority to designate them a partner for other purposes?

A Because the nature is different.

Q Why the difference in designation of strategic partner, one requiring somebody else's authorization, and one you can do on your own initiative?

A One kind of partnership is supply partnership--example, CNN, scientific inventor, Marconi, and within certain limits, I had authority to admit those types of partners. Another type of strategic partners would be investment partners, and I had zero authority when it came to the admission of the investment partners.

(Whereupon, the portion of the videotaped deposition of Stephen Ng played for the jury was concluded.)

* * *

(Viewing of the videotaped deposition of S. Ng resumed on 3/3/97; Transcript 1749)

(Whereupon, a portion of the video deposition of Stephen Ng was played for the jury.)

Q When you say you wouldn't approve of any kind of an option, was that Wharf's policy, that they didn't allow options for investment into Wharf projects?

A It's a general policy, yes.

Q Okay. And this policy was established by whom?

A By the company.

Q Is it somewhere written?

A I don't remember.

Q Did Mr. Woo direct you that you can't give options in any of the Wharf projects?

A I don't remember.

Q Now, you say that you would never approve an option; do you recall that?

A Yes, I do.

Q Did you tell that to Mr. Fung?

A I don't remember whether I told it to Mr. Fung.

Q Did you ever have any discussion with Mr. Fung regarding whether Wharf would allow another party to have an option to invest in the cable system?

A I'm sorry, I don't remember.

Q Did you ever discuss with anyone whether Wharf would allow another party to have an option to invest in a Wharf Cable system?

A I cannot remember. I'm sorry.

Q Did you ever discuss that subject with anyone from UIH?

A I cannot remember.

Q Did you ever discuss that subject with anyone from NYNEX?

A I cannot remember. I'm sorry.

Q Did you ever discuss it with Peter Woo?

A Discuss what with Peter Woo?

Q Whether Wharf would allow another party to have an option to invest in the Wharf Cable system?

A I do not remember whether I did.

Q When I say the Wharf Cable system, I'm referring to CNCL, Wharf Cable, WCIL, any of the companies related to the ownership of the Wharf Cable system; do you understand that?

(Whereupon, an objection was made; no foundation, and to the form.)

A I understand now that you have said it.

Q Okay. Well, does that change any of your answers?

(Whereupon, the same objection was made; and compound.)

A No.

Q Now, why wouldn't, to your knowledge, Wharf allow another party to have an option to invest in the cable T.V. system?

A To my knowledge, it is an unwritten policy that we do not grant options to invest.

Q Why?

A It is a, to my knowledge, a policy that the company adopted.

Q Why?

A I'm not sure why.

Q Did you have any role in the adoption of this policy?

A I don't remember having a role in the adoption of this policy at the group level.

Q At any level?

A At any level, but the policy is a group policy.

Q What do you mean by a group policy?

A Meaning Wharf Holdings, applying to its subsidiaries.

Q And how did you learn of this policy?

A I cannot remember. I suppose from experience.

Q Did somebody tell you the policy?

A I cannot remember whether somebody told me the policy.

Q Well, let's try again. How would you know of this policy if somebody didn't tell it to you and it's unwritten?

(Whereupon, an objection was made as to foundation; and speculation.)

Q I mean, that covers both possibilities, doesn't it? It's unwritten and no one told it to you?

(Whereupon, an objection was made; argumentative.)

A I do not remember.

Q So you had a policy at the Holdings level that you wouldn't grant options, but you don't remember the reason for the policy or how you found out about it. Is that right?

A I do not remember the reasons for the policy or how I found out about it. That is correct.

Q And you don't remember discussing it with anybody at the board level; correct?

A I don't remember discussing the policy.

Q Did you ever discuss the policy with anybody on the board of directors of Wharf Holdings?

A I don't remember any discussion.

Q And did you ever discuss the policy with anybody who reported to you like Mr. Fung?

A I may have, but I cannot remember.

Q And did you ever discuss the policy with anybody outside of the Wharf entities?

A I may have, but I cannot remember.

Q When did this policy get adopted, to your knowledge?

A I cannot remember precisely, but probably in the 1980s or earlier.

Q Why do you suggest that?

A Because I have known about this policy for years.

Q Let's look at Exhibit 2085--2086, I'm sorry. This is a July 25, 1992 Wharf Communications Investment Limited weekly activity report by Emil Fung, and I'll ask you to look under the Wharf Cable section.

A Right. Exhibit 2086, Wharf Cable section.

Q Right. Do you see the second bullet point there where it says "partners"?

A Yes, I do.

Q "Strong support maintained by UIH and Fox. Discussed potential pull out of NYNEX. No real concerns." Do you see that?

A Yes, I do.

Q Now, do you recall receiving this information in July, 1992?

A No, I don't.

Q Do you remember discussing a potential pull out of NYNEX in July, 1992?

A I do not.

Q Do you recall anybody advising you that there was no real concern about a NYNEX pull out in 1992?

A No, I don't.

Q Would you have had any concern in the summer of 1992, or did you have any concern about a NYNEX pull out?

A I don't remember.

Q Would it have been a concern?

A Possibly. I don't remember.

Q Do you recall conversations you had with UIH representatives during the summer of 1992 regarding a possible NYNEX pull out?

A I don't remember.

Q Do you recall any discussions you had with UIH representatives at any time prior to the end of 1992 regarding a possible NYNEX pull out?

A I don't remember.

Q Do you recall any discussions with UIH representatives where you indicated their right to invest would depend on NYNEX also investing?

A I don't remember.

Q Did you have any discussions where you indicated that the UIH right to invest would depend upon an investment by some Telecom partner?

(Whereupon, an objection was made; no foundation.

A I don't remember.

Q Let me ask you what the Wharf Communication Investment Limited coordination meeting group was, how it came about, who it was and what it was supposed to do. And to assist you in this, I'm going to hand you Exhibit 2086a.

A 2086A.

Q Right. Now, 2086A is a group of 1992 Wharf Communication Investment Limited coordination meeting notes, I guess. And let me ask you first, what is the--how is the group formed and who was it that was part of this coordination group?

A This was a meeting, I believe either weekly or bi-weekly in frequency, which was attended by principally my direct reports in Wharf Communications and provided a forum for

people to get mutually updated. You will notice, therefore, that the record says "notes." The record is not intended to be official.

Q Mr. Ng, turn to the coordination meeting agenda for July 27, 1992, if you will, please?

All right, look at the notes that are attached to it, if you will. And I want you to look over on the third page under "strategic alliances."

A Right.

Q See that? It starts out NYNEX Strategic alliances, it says NYNEX?

A Yes, I do, 3.1, NYNEX.

Q Look at 3.1.6 where it says, "It was agreed that NYNEX adds no value to Wharf Cable." Do you see that?

A Yes, I do.

Q Did you agree with that?

A No.

Q You disagreed with that?

A I do.

Q You disagreed at that time?

A I don't remember.

Q Do you recall any of the discussion about why NYNEX added no value to Wharf Cable?

A I don't remember.

Q When you got these notes, did you read them and submit corrections?

A I probably didn't read them.

Q Do you recall who was the spokesperson for the facts that NYNEX adds no value to Wharf Cable?

(Whereupon, an objection was made; no foundation.)

A I can't recall.

Q Staying within that same numbered paragraph, it says, "Investors like Fox and UIH would actually prefer not to have NYNEX as partners, as they were not keen on the Telecoms business." Do you see that?

A Yes, I do.

Q Do you recall whether in discussions with Fox or UIH, they indicated they were not interested in having NYNEX as a partner?

A I do not.

Q Do you remember any discussions with UIH about having NYNEX as a partner?

A Do I remember any discussion?

Q Right.

A I recall we talked about it. I don't remember when and what and why.

Q Do you remember any of the discussions you had with UIH prior to the bid about NYNEX?

A I don't recall the discussions.

Q No discussions?

A No, I don't recall the discussions.

Q Do you recall there were discussions?

A Yes.

Q Do you recall generally what was discussed?

A I can't recall.

Q Now, did you have an understanding one way or another prior to the bid as to whether Fox and UIH were keen on the Telecoms business?

A The question was?

Q Prior to the bid, what was your understanding of UIH's interest in the Telecom business?

A I don't remember, but I don't think they were too keen.

Q Do you recall during the summer of 1992, negotiations going on with UIH regarding a joint venture arrangement on the Cable T.V. project?

A Yes, I do.

Q You remember that?

A Yes, I do.

Q Who was conducting those discussions?

A On my side, principally Emil Fung.

Q And on UIH's side?

A Principally Mike Fries.

Q What do you remember about those discussions?

A I remember the discussions took place, but I don't remember much more than that.

Q Did Mr. Fung report to you regularly about what was happening between him and UIH?

A He tried to keep me informed from time to time.

Q Did you and Mr. Fung work in the same building?

A Yes, we did.

Q Did you work on the same floor?

A Yes, we did.

Q Did you see him almost every day?

A I saw him regularly, yes.

Q And did you talk to him almost every day about the Cable project?

A Regularly, but I can't say whether it was every day.

Q Yes. And then if you'll turn to 06878, I'd like to ask you a question about that page.

A 06878, which appears to be notes of the meeting held on 26 August. Right?

Q Right. Now, up at the top, it says, "Competition for NYNEX," right? Are you on that page?

A Yes, I am, 4.3, right?

A Right. And it says, "Support from NYNEX far from satisfactory so far. Consider other partnership candidates to provide competition or as fallback." Do you see that?

A Yes, I do.

Q Then it goes on to say, "No approach for the time being, but SN to register displeasure with NYNEX, Forina or Duffy at the next opportunity." Do you see that?

A I do.

Q "SN" would be you. That's correct?

Q I believe so.

Q What was going on with NYNEX at this time that prompted this comment in these notes?

A I don't recall.

Q Well, do you recall that the support from NYNEX was far from satisfactory at this time?

A No, I don't.

Q Do you dispute that?

A I can't recall.

Q You don't know one way or the other?

A I cannot recall.

Q Do you recall looking for a competitor for NYNEX for the project?

A No, I don't.

Q Do you recall approaching someone from NYNEX and expressing displeasure over NYNEX's support for the project?

A I cannot recall.

Q To the best of your knowledge, are these notes that I've read from August and July regarding NYNEX true and accurate?

A I cannot recall.

Q We can put these away for the time being, although not forever. Let me ask you to look at Exhibit 2100. This is an August 14, 1992 memo from you to Mr. Woo, and I'll ask if you recall this document?

A Exhibit 2100, memo, 14 August, 1992.

Q Do you recall that memo to Mr. Woo?

A Now that I've seen it, yes, I do recall.

Q Can you tell me, please, what prompted this memo? Why did you write it?

A I don't recall the reason for writing it.

Q Okay. When you wrote memos to the Chairman, did you try your best to be as accurate and precise as possible?

A As a general rule, yes.

Q Now, if you'll look, please, at the first page, it says "At this week's board meeting, we touched on the timing dilemma we faced with the NYNEX--"

A I'm sorry. Where is it?

Q On the first--on the cover page, the transmittal of Exhibit 2100.

Q Right.

Q You see it references discussion at a board meeting that week. Do you see that?

A Yes, I do.

Q We've talked already in this deposition about an August 11 board meeting of WCIL?

A Right.

Q Can you recall for me what was discussed at that board meeting regarding the timing dilemma posed by NYNEX?

A I can't recall what the discussion was at the board meeting.

Q You were aware at least by the time of this memo that you wrote to Mr. Woo that it was not likely that NYNEX would be able to become an equity investor in the Cable project at the time of the bid; correct?

A That's what the note seems to suggest.

Q And, in fact, there is no guarantee that NYNEX would ever agree to become an equity investor in the project, was there?

A I don't think anybody was prepared to guarantee.

Q You were reasonably certain at least that they wouldn't be by the time of the bid?

A That's what the note seems to suggest.

Q All right. Now, why, if they couldn't become an equity investor at the time of the bid, was it important to have them in the bid at all.

A I don't--

(Whereupon, an objection was made; no foundation.

A I don't recall.

Q Well, these appear to be options about how you can structure and position NYNEX's involvement in Wharf for purposes of the bid; right?

A Yes.

Q And I guess my question is if they weren't going to be a part-owner of Wharf Cable, why did you have to have them in the bid at all.

(Whereupon, an objection was made; no foundation.)

A I can't recall.

Q Now, option number one talks about making NYNEX an equity partner subject to later approval. Do you see that?

A Option number one?

Q Right.

A "Include NYNEX in Wharf Cable's bid as a full equity partner."

Q Right.

A "Except that NYNEX's participation will be made subject to board approval."

Q Okay.

A Yes, I see that.

Q Did you discuss that option with Mr. Woo?

A I can't recall.

Q And did you deem these four risks that you set out under that to be the most significant risks as to why you couldn't do that?

A Why I couldn't do what?

Q Why you couldn't do that option number one?

A I can't recall.

Q At this time, what was your intention with how you were going to present UIH in the bid?

A This time being August 14?

Q Right.

A I don't remember.

Q Now, look at option number two. It says, "Call a spade a spade. Implicitly acknowledge that NYNEX is really only interested in an integrated Cable and Telecom project, and if there's Cable only, NYNEX's interest will be much reduced and their equity participation will not be a matter of high corporate priority." Do you see that?

A Yes, I do.

Q Now, was that in fact your understanding of NYNEX's intent at that time?

A I can't recall.

Q Did you discuss with UIH the fact that NYNEX was only interested in a cable and Telecom project and if there was cable only, NYNEX may not be interested?

A I don't remember.

Q Did you discuss any of the information contained on this page with UIH?

A I don't remember.

Q At about this time in August, 1994, did you have discussions with UIH regarding the problem being posed by NYNEX with respect to the bid?

A I don't remember.

Q Let's look over on the next page, if you will. It says that one of the risks of the second option is is that the relationship with UIH will be different, and then it talks about "supermajority may in that case amount to unanimity." Do you see that?

A Risks a--"without both NYNEX and Fox, the relationship with UIH will be different. "

Q Right.

A "For instance, supermajority may in that case amount to unanimity." Right.

Q Now, when it says "the relationship with UIH will be different," as of the time of this memo, what relationship were you anticipating with UIH at the time of the bid?

A August 14th? I don't recall.

Q Well, August 14th, I'm asking what you were anticipating would be the relationship between UIH and Wharf at the time of the bid?

A I can't recall precisely on August 14th what was envisaged.

Q Well, I'm not asking precisely August 14th. I'm asking in the August, early September time period. What relationship

did you envisage with UIH that would be different if you followed that option with NYNEX?

A I can't remember.

Q Isn't it a fact that as of this time, August, 1992, you envisaged that UIH would be an equity investor as of the time of the bid?

A I don't remember whether it was August or when, but it was envisaged that both NYNEX and UIH would become equity investors in Wharf Cable.

Q And that was some time prior to the bid?

A Some time prior to the bid submission.

Q And was it envisaged that at the time of the bid, either NYNEX or UIH may be an equity investor, but not necessarily both?

A The question was?

Q Was it envisaged that as of the time of the bid, either NYNEX or UIH might be an equity investor, but not both?

A I don't remember.

Q You don't remember that ever being anticipated?

A I don't remember.

Q Do you recall during the August and September, 1992 time period, dealing with NYNEX on the basis that it would not be an investor at the time of the bid?

A No, I don't.

Q Well, in fact, that's what this August 14, 1992 memo's all about, isn't it?

A This memo sets up options.

Q Right. Sets out three options and none of them really considered NYNEX actually being an equity owner at the time of the bid, do they?

A That's what the note says.

Q And that was your understanding in mid-August, 1992; correct?

A I don't remember.

Q Did you ever have any different understanding between the time of this August 14 memo and the time of the bid regarding whether NYNEX would be an equity owner in the bid?

A I can't remember.

Q Look at Exhibit 2019, if you will, please. That was the bid case presentation. Let me help you here. Here you go. Exhibit 2019.

Let's talk about that for a little bit again. Do you remember that was in mid-september, 1992?

A Yes, it says 15 September 1992.

Q All right. Now, look over on WC025820 under "partnership issues."

A 025820, right.

Q Okay. Now, under "partnership issues," there is a clear distinction between NYNEX and UIH and what their relationship will be with Wharf as of the time of the bid, isn't there?

(Whereupon, an objection was made; argumentative and mischaracterizes the document.)

Q You can answer.

A On this piece of paper, 025820, it says, "NYNEX policy council meeting 5 October, board meeting 15 October, non-equity partner for bid purpose, possible 20 to 25 per cent participation post-bid and technical cooperation agreement."

Q And for UIH?

A For UIH, it says, "10 per cent equity partner and interested in more. Not a balance sheet company. Default provision..." So the language is different.

Q Well, in fact, the anticipated structure and relationship as of the time of this document was different, too, wasn't it?

A I can't recall.

Q Do you recall having a belief prior to the time of the bid that UIH was not a very wealthy company?

A I recall we were not sure about UIH's financial standing. Whether it was before the bid only or both before and after the bid, I don't recall.

Q Well, you were sure, at least at the time of the bid, that they didn't have enough assets at that time to pay a 10 per cent share of what would be required?

A I'm not sure whether we were sure. What apparently was the case was we did not have confirmation.

Q So you didn't know one way or another UIH's financial standing as of the time of the bid?

A I think confirmation was, or the lack of confirmation, rather, was more accurate than we being sure.

Q Confirmation of what?

A The financial standing of UIH.

Q All right. Now, based upon this Exhibit 2019 and your August 14 memo, Exhibit 2100, it does appear that there were separate considerations going on between UIH and NYNEX; correct?

A Well, the paper suggests that different situations were considered.

Q Okay. And so it was considered that you might have UIH as an investor at the time of the bid, but not NYNEX; right?

A That's what the papers suggest.

Q Well, if the papers suggest that, does that mean that it's likely to have been the case?

A Not necessarily.

Q Do you disagree with what you said in your own memo to Mr. Woo?

A About?

Q About the fact that NYNEX may not become an investor as of the time of the bid, which means your relationship with UIH might be different?

A I don't recall.

Q Do you disagree with what was contained in the bid presentation document that we just looked at that showed UIH and NYNEX having a different relationship with Wharf?

A I don't recall whether I disagreed.

Q Do you dispute that that was actually being considered at the time, mid-September, 1992?

A By who?

Q By the--by Mr. Woo?

A I don't know whether Mr. Woo considered it.

Q By the Wharf Communications board?

A I don't recall.

Q What about by the members of this coordination group that would meet, do you know what their understanding was regarding separate tracks for UIH and Wharf--and NYNEX prior to the bid?

A I don't remember.

Q Was it a necessity that UIH be an investor for NYNEX to be an investor?

A Was it a necessity?

Q Yes.

A That was the subject of negotiation.

Q Was it a necessity for NYNEX to be an investor for UIH to be an investor?

A That would have been one of the points to be covered by the agreement.

Q Well, let me ask you this. As of the time of the bid when Wharf put in its bid for the Cable Television system, did it have an intent that it would allow NYNEX and UIH to become investors in the Cable T.V. system?

A At the time of its submission of the bid, namely 30 September 1992, it was Wharf's intent to ultimately invite NYNEX and UIH to become joint investors in the Wharf Cable project.

Q And that was Wharf's intent on September 30, 1992?

A That is correct.

Q Subject to what conditions?

A Subject to investment agreements being formalized.

Q Investment agreements containing what terms?

A Containing all terms governing the investment.

Q Namely what? Give me an example of a term that would have to be there?

A Who the investors were.

Q Okay. Anything else?

A Corporate governance.

Q Okay. Anything else?

A Funding commitment.

Q Okay. Anything else?

A I'm sure there could be many thing else.

Q Okay. As of September 30, 1992, were there any outstanding disputes among UIH, Wharf and NYNEX on any of those points?

A I don't remember.

Q Any time after September 30, 1992 and until the end of 1992, were there any disputes among UIH, Wharf and NYNEX on any of those points?

A Any time after 30 September 1992?

Q And before the end of 1992.

A I don't remember.

Q Now, you say that it was Wharf's intent to make UIH and NYNEX--to allow UIH and NYNEX to become investors; correct?

A Joint investors.

Q Okay. What was Wharf's intent with respect to having only one of the two become investors?

(Whereupon, an objection was made; no foundation.)

A That was not our intent.

Q Your intent was not to allow NYNEX in without UIH?

A That was not our intent.

Q And your intent was not to allow UIH in without NYNEX?

A That was not our intent.

Q Did you ever disclose that intent to NYNEX?

A I don't remember.

Q Did you ever disclose that intent to UIH?

A I don't remember.

Q Let me just make sure I understand your last answers here; make sure we don't have too many negatives in it. Did Wharf have an intent to allow NYNEX to become an investor without UIH becoming an investor?

A No. Wharf did not have that intent in September, 1992.

Q And did Wharf have an intent to allow UIH to become an investor without NYNEX becoming an investor?

A I don't believe Wharf had in September, 1992.

Q And did Wharf have the intent that neither could become an investor unless the other one became an investor?

A Can you state the question again?

Q Did Wharf have an intent in September, 1992 that neither could become an investor unless they both became an investor?

A I believe that was Wharf's intent.

Q And was that intent disclosed to anyone at NYNEX?

A I don't remember.

Q Was that intent disclosed to anyone at UIH?

A I don't remember.

Q Now, you say that was Wharf's intent in September 1992; correct?

A That is correct.

Q Did that intent change any time between September, 1992 and the end of 1992?

A I don't remember, but I don't think so.

Q So in 1993, was it Wharf's intent that UIH could not become an investor in the project unless NYNEX also an investor?

A Or unless a new basis could be found.

Q So in 1993, UIH could not become an investor unless NYNEX became an investor, or unless a new basis could be found?

A That is correct.

Q What do you mean by that?

A A new basis, a new ownership basis.

Q So it was your intent in 1993 that UIH could not become an investor unless what, what ownership basis?

A A new ownership basis.

Q New as opposed to what? What was the old ownership basis?

A The old ownership basis was NYNEX, UIH and Wharf.

Q All right. And then NYNEX dropped out of the picture at the end of '92; right?

A That is correct.

Q And so it was your intent that UIH in and of itself could not become an investor after the end of 1992?

A That is correct.

Q Let me ask the question again. As of January 1, 1993, was it Wharf's intent that UIH in and of itself could not become an equity investor in the Wharf Cable project?

A Not unless a new basis can be found.

Q Well, the old basis was three partners; right?

A That was one element of the old basis.

Q Well, what do you mean by a new basis? You keep saying--

A A new deal.

Q A new deal? Okay.

A New basis, new deal.

Q Okay. So you were convinced that as of January 1, 1993, you didn't have a deal with UIH; right?

A As of?

Q January 1, 1993.

(Whereupon, an objection was made; no foundation.)

A I was convinced.

Q Now, you testified a few moments ago that it was Wharf's intent as of the time of the bid, that it would offer equity participation to UIH and NYNEX, but not to either one alone; correct?

A Correct.

Q When did Wharf formulate that intent, to the best of your knowledge?

A Fairly early on, but I can't remember precisely.

Q When you say fairly early on, you mean a matter of days, weeks or months prior to the bid?

A Not years. I can't remember.

Q Well, was it before September, 1992?

A I can't remember.

Q Was it a matter of days before September 30, 1992?

A I wouldn't think so.

Q So you think it was more than just days?

A I can't remember.

Q Was it as much as a week?

A I cannot remember.

Q What did you tell UIH about that subject?

A I can't remember.

Q You can't remember discussing that subject with them at all?

A The subject of?

Q The fact that UIH could not invest unless NYNEX invested.

A I don't remember.

Q Did you ever discuss with NYNEX that it couldn't invest unless UIH invested?

A I can't remember.

Q But do you believe you had such discussions, or you don't remember that either?

A I don't remember whether I had such discussions.

Q Is that true with respect to both UIH and NYNEX?

A Meaning?

Q You can't remember whether you had such discussions with either UIH or NYNEX?

A I can't remember.

Q Now, you testified that it was Wharf's intent as of the date of the bid that it would offer equity to UIH and NYNEX, but not to either one alone; correct?

A That is correct.

Q Why?

A The joint venture was conceived as a three party joint venture.

Q And why was it necessary that it be three parties rather than, say, two parties?

A It was a decision of the company.

Q What was the basis of the decision, to the best of your knowledge?

A Among other things, I believe we wanted to make the super majority practical, both for the majority shareholders and the minority shareholders.

Q Now, going back to Exhibit 2021, the first option talks in terms of technical cooperation agreements and 100 percent Wharf ownership; do you see that?

A Option one, yes.

Q Right. And that's eventually the option that was chosen; correct?

A I haven't read through the option, but the first sentence suggests yes.

Q That's your recollection, isn't it, that at the time of the bid, Wharf was the 100 per cent owner, with technical cooperation agreements with UIH and NYNEX?

A That is my recollection.

Q Okay. Now, do you know who chose that option?

A The company did.

Q Now, did you tell UIH that if the NYNEX board didn't approve it, then UIH would not be able to invest?

A I do not remember.

Q Did you tell UIH that its right to invest would depend upon NYNEX agreeing to invest?

(Whereupon, an objection was made; no foundation, and asked and answered.)

Q You can answer.

A I do not remember.

Q And did you say anything like that to NYNEX about UIH?

(Whereupon, the same objection was made.)

Q You can answer.

A I do not remember.

Q And at the time following the bid, did Wharf consider UIH and NYNEX to be on the same footing in terms of whatever rights they might have, or whatever rights they might expect to have, other than the fact that NYNEX would be subscribing to a larger interest?

A I don't recall any unequal footing, other than this pro rata factor.

Q Other than the fact that UIH was going to be trying to obtain 10 per cent and NYNEX 20 per cent; right?

A Uh-huh, and as far as the investment was concerned, I do not recall any reason why apart from that that they would be treated any differently.

Q Okay. And as far as Wharf was concerned, if UIH didn't invest, NYNEX was not going to be able to invest; is that true?

A As far as Wharf was concerned, if UIH did not invest, then we would need to find a new basis for NYNEX to invest.

Q - Meaning a new partner, so that there would still be three parties?

A Most likely, yes, a new partner.

Q Other than a new partner, what other kind of basis would you be talking about?

A I don't know. We didn't go that far. I don't think we considered what other basis could be acceptable.

Q But it was important to Wharf that there be at least two partners other than Wharf?

A That was important to Wharf.

Q And the reason for that?

A One of the main reasons was because we wanted to make sure we give sufficient protection to the minority shareholders without impairing unduly the ability of the joint venture company to act, which is why we were very keen on this super majority protection, both for the minority shareholders and for the majority shareholders.

Q Well, the super majority protection is for the protection of minority shareholders, isn't it?

A Not only for the protection of the minority shareholders, but that was also an arrangement by which the majority shareholder can, with the agreement of either minority shareholder, take positions more efficiently.

Q And I believe you testified, but let me confirm the time period, between September 30, 1992 and the end of 1992, you had no discussion with anyone from UIH or NYNEX

concerning the fact that Wharf wanted at least two partners, and not less?

A I did not testify that. What I testified was, and I continue to testify, that I do not recall whether there was any discussion with either UIH or NYNEX.

Q On that subject.

A On that subject.

Q Let me ask you to look at Exhibit 2512. This is a file note of a meeting with Henry Van Demark on October 13, 1992. I'd ask you if this reflects a meeting that you had with Mr. Van Demark and Mr. Duffy on October 13, 1992?

A May I take a minute to read it?

Q And was it your belief at the time, that until the NYNEX board approved NYNEX's investment, UIH would not be able to obtain an investment?

A May I have that question read back?

Q Please.

(Whereupon, the pending question was read back.)

A That was probably my belief at that time. But I'm not 100 per cent sure.

Q And you don't remember talking to UIH about this at the time?

A I do not remember.

Q So as a practical matter, UIH's ability to invest in the Wharf Cable project at that time depended on the approval of the NYNEX board; is that right?

A Among other things, I would expect that to be the answer, yes.

Q Now, did you ever direct anyone, or did you yourself ever sit down with UIH and explain to them that until the NYNEX board approved NYNEX's investment, UIH wasn't going to be able to get an investment right?

(Whereupon, an objection was made; no foundation.)

A I cannot remember.

Q Did you and Mr. Fung ever discuss that fact, that UIH's right to invest depended, among other things, upon the approval of the NYNEX board?

(Whereupon, the same objection was made.)

A I don't remember.

Q What was your expectation in the event that NYNEX's board approved NYNEX's right to invest? Would they then have the right to invest?

A I don't think they have the right to invest; I don't think anybody has the right to invest until a document is signed to give them the right to do so.

Q Well, let me ask you to look at Exhibit 2112--I'm sorry, 2113. 2113 is a memo of December 29, 1992 from Henry Wise to WCIL, Attention Stephen Ng.

Let me ask you to take a look at this please and tell me if you recall the events that prompted that memo?

A Take a minute to read this?

Q Sure.

(Pause.)

A Okay, I've taken a quick look at the exhibit.

Q Do you remember the events that gave rise to this memo?

A Vaguely.

Q Why don't you tell me what they were.

A It appears Mr. Wise was giving me advice in relation to the Wharf Cable bid for a fixed network license, subsequent to the advice I had received previously from NYNEX about the NYNEX board's decision not at that time to invest in Wharf Cable.

Q Okay, do you remember how many days, roughly, it was before Mr. Wise's memo that you heard from NYNEX that it would not be investing in the Wharf Cable project?

A How many days in between I'd heard about the NYNEX decision and when this was written?

Q Yeah, how much previous to December 29, 1992 had you heard from NYNEX?

A I don't remember; a matter of days.

Q What did you hear from NYNEX exactly?

A Talking from recollection, I was advised that the NYNEX board had considered the opportunity to invest in Wharf Cable and had decided that it was not ready to make that investment at that time.

Q Did you contact Mr. Wise regarding the NYNEX decision not to invest in the cable network?

A I don't remember, but I probably did.

Q Why?

A He was a consultant to, or rather Sarah Clay and Partners was a consultant to Wharf Cable.

Q What kind of consultation were you looking for?

A Advice.

Q On what?

A On what?

Q Yeah. What were you looking for advice on? NYNEX tells you they're not going to invest, so what do you need advice on?

A I don't remember what advice I sought from him, but the eventual advice was documented in this note.

Q Well, you were speaking public relations advice, weren't you?

A I'm not sure. I don't know how you concluded that.

Q Why were you seeking advice at all?

A Is it inappropriate to seek advice?

Q Why were you seeking advice at all?

A I needed another opinion.

Q On what?

A In relation to the NYNEX decision.

Q Opinion on what, though?

A On what was the best course of action to take.

Q You were looking for advice on the proper public relations stance, weren't you?

A I may have been, but I don't remember.

Q Were you seeking advice along the lines of what is included in this Exhibit 2113? Let me ask it differently? Is the advice contained in 2113 responsive to what you were asking of Mr. Wise?

A I do not remember what specific request I made to Sarah Clay and Partners, but generally, the advice contained in Exhibit 2113 appears to have been the kind of advice I was looking for at that time generally.

Q Now, at that time, the government had not approved your cable T.V. bid application yet, had it?

A I'm not sure it had not already advised us that our bid was successful.

Q With respect--

* * *

(Viewing of the videotaped deposition of S. Ng resumed on 3/3/97; Transcript 1756)

(Whereupon, a portion of the video deposition of Stephen Ng was played for the jury.)

Q With respect to Point 7, Mr. Wise indicates that the stance should be that everything is on course. NYNEX and UIH are to be providing full technical support and specialist management expertise, just as we said. Right?

A Yes, that's what it says.

Q And was that in fact happening at the time, that UIH and NYNEX were providing full technical support and specialist management expertise?

A This was December, 1992?

Q Yes.

A I recall UIH was providing some support. I do not remember whether NYNEX was at the time.

Q And UIH continued to do so on into 1993, did it not?

A I believe so.

Q Now, did you ever disclose to anybody connected with the Broadcast Authority that the right of UIH to invest in the project would depend upon whether NYNEX invested in the project?

(Whereupon, an objection was made; no foundation.)

A No, because UIH did not have a right to invest in the project.

Q Let me ask the question differently. Did you ever disclose to anyone at the Broadcast Authority that UIH would not be extended an opportunity to invest in the project unless NYNEX agreed to invest in the project?

A I don't remember doing so.

Q And did you ever tell anybody at the Broadcast Authority that NYNEX would not be extended an opportunity to invest in the project unless UIH agreed to invest in the project?

A I do not remember doing so either.

Q Why wouldn't you disclose that to the members of the Broadcast Authority?

A Well, I believe as far as the Broadcasting Authority was concerned, that would be a future event. But I'm not sure whether that was the reason, or the only reason.

Q What do you mean it would be a future event?

A The bid was submitted as a bid from a wholly owned subsidiary of Wharf Holdings.

Q Okay, just to make sure I'm curing your counsel's objection, have you ever disclosed to the Broadcast Authority that whether UIH would be given an opportunity to invest would depend upon whether NYNEX would agree to become an investor?

(Whereupon, the same objection was made, and asked and answered.)

Q Can you answer that question?

(Whereupon, the witness was instructed to answer the question again.)

A I don't recall whether I ever did.

Q Now, before, I was asking you questions about whether UIH, to your recollection, ever expressed dissatisfaction with the financing plan of Wharf; do you recall those questions?

A I recall you asked some questions in relation to that.

Q Okay. In August or September of 1993, did UIH ever express any dissatisfaction with Wharf's business plan, Wharf Cable's business plan?

A My answer is the same as before; namely I do recall at some time, that there was apparently some comments from UIH about Wharf Cable's business plan. But I do not remember the timing of those comments.

Q So your answer with respect to business plan is the same with respect to financing plan?

A That is correct.

Q The two documents, 2005 and 2006, are March, 1994 memoranda inviting certain individuals to a meeting to occur on March 18, 1994 regarding UIH; correct?

A Memoranda and letters.

Q And letters, okay. Do you remember that meeting?

A I remember that meeting.

Q You were at that meeting; correct?

A I was at that meeting.

Q Now, the individuals who were invited to the meeting were all Wharf Holdings directors; is that correct?

A I believe so.

Q Do you remember what resolution there came out of the meeting? Was there some decision that was made by the Wharf representatives?

A I don't recall there was a resolution as such, especially given that it was an informal board meeting. But I recall there was a general consensus.

Q Okay. Among the Wharf representatives?

A That is correct.

Q What was the general consensus?

A The general consensus was if the Wharf board was asked to invite UIH to come in to invest in 10 per cent of Wharf Cable as of that particular date, then the answer was we were not ready.

Q Other than the March 18, 1994 meeting among the various Wharf Holding directors, can you recall any instance where Wharf Holdings directors, whether formally or informally, discussed UIH?

A I cannot remember.

Q And you can't recall any such discussions being reported to you?

A No, I cannot recall.

Q Well, let's keep going. Let me ask you to look at Exhibit 86. This is a letter from a Mr. Mike Fries of UIH to Mr. Emil Fung. I'd ask if you ever saw that letter before?

A Exhibit Number 86?

Q Right.

A Letter dated July 20, 1992 from Mike Fries on UIH letterhead to Emil Fung. No, I don't remember seeing this.

Q What was Mr. Fung's position at this time?

A As stated on the letter, he was Vice-President, Commercial, Wharf Communications Investments, Limited.

Q And what was his responsibility with respect to the cable T.V. venture?

A He was a member of the core team.

Q And he reported directly to you?

A He reported directly to me.

Q And did he have authority to negotiate with UIH with respect to its interest in the cable venture?

A He had authority to negotiate, but not to close.

Q Not to close; is that right?

A That is right.

Q And what was your authority?

A My authority was to negotiate and not to close.

Q And who had the authority to close?

A The board.

Q The entire board?

A The entire board.

Q The board of Wharf Holdings?

A The board of Wharf Holdings.

Q Any other board?

A Well, likewise also the board of Wharf Communications and Wharf Cable were involved, those two companies.

Q Did you ever in any of your discussions with UIH indicate that board approval from Wharf Cable would be required before a deal could be struck where UIH would purchase an equity investment?

A I don't remember.

Q What about the board of Wharf Communications; did you ever discuss with anyone from UIH that the board of Wharf Communications would have to agree before UIH could become an equity investor in the cable project?

A I don't remember.

Q What about Wharf Holdings; did you ever discuss with anybody from UIH that the board of Wharf Holdings would have to agree before UIH could become an investor in the cable project?

A I don't remember being that specific.

Q What did you ever tell UIH with respect to board approval before they could become an investor in the Wharf Cable project?

A What I do remember is I told UIH that their investment was subject to board approval.

Q That's all you ever told them?

A To the best of my recollection as I sit here.

Q You didn't say which board?

A I don't remember.

Q And you didn't tell them about the three person committee?

A I don't remember.

Q And who did you tell this to, by the way?

A I don't remember.

Q And when did you tell it to whoever you told it to?

A I don't remember.

Q Did you ever discuss with anyone from UIH the limits of your authority with respect to designating someone as strategic partner?

A I do not remember.

Q Did you ever discuss with anyone from UIH the necessity of a greater authority if somebody was to become a strategic partner in the equity sense?

A I do not remember.

Q Let me ask you to look at Exhibit 2527. This is a September 27, 1993 memo from Mark Schneider to you regarding status of MOU. Have you ever seen this document before?

(Whereupon, an instruction was made not to respond regarding your conversations with counsel, based on the attorney/client privilege, work product. Otherwise, you can go ahead and answer.)

A I don't remember seeing Exhibit 2527 before.

Q Up at the upper part of the document, there's handwriting that says, "Emil, advice? Draft reply today." Do you see that?

A Yes, I do.

Q That's your handwriting; right?

A That appears to be my handwriting.

Q And why were you seeking advice from Emil with respect to this memo?

A I don't recall seeing this memo, and I don't recall seeking advice from Emil.

Q You don't doubt that you wrote that on the memo, do you?

A I'm not questioning whether I wrote it on there or not, but I do not remember.

Q Look at the second paragraph of the memo where it says, "As you will recall when we discussed this last month, all agreed to finalize the documentation of our agreement by the end of September." Do you see that?

A Yes, I do.

Q Were you in any discussions where you agreed to finalize the documentation by the end of September?

A (A) I'm not sure what discussion Mr. Schneider was referring to in this fax, and (B) I'm not sure what documentation and what agreement he was referring to in the same sentence.

Q Were you involved in any discussions with UIH within the past months prior to September 27, 1993 where you agreed you would finalize an MOU by the end of September?

A Finalize an MOU by the end of September; is that what --

Q It seems to me what it refers to.

(Whereupon, an objection was made as to the form and no foundation.)

A No, there may have been discussions, but I do not remember. There may not have been.

Q Okay. Now, the next sentence says, "I understand from Emil that you have presented the deal to the Wharf board." Do you see that?

A Yes, I do.

Q Did you present anything to the Wharf Board prior to this day regarding a UIH possible investment in the Wharf project?

A I do not remember doing that.

Q Is that something you would be likely to remember if you did do it?

A If I did do it and if it was a significant presentation, I would probably have some recollection.

Q When you got this memo, did you talk to Mr. Fung about the fact that UIH was under the impression you had presented the deal to the Wharf board?

A I don't remember receiving the memo, and I don't remember discussing the memo with Mr. Fung.

Q As a matter of fact, as of September 27, 1993, you had presented nothing to the Wharf board regarding UIH, had you?

A I do not remember presenting anything to the Wharf board, as I said earlier.

Q Did Mr. Fung indicate to you that he had told UIH that this matter had been presented to the Wharf board?

A I do not remember whether he did or not.

Q Now, when you got this memo, why didn't you just call up UIH or write them a quick letter trying to clear up any misimpressions this memo might indicate?

A I don't remember when I received this memo or whether I received the memo, and I don't remember whether I called UIH or whether I sent a letter or fax to UIH. My memory is blank.

Q Do you remember in any way communicating to UIH that the matter had not been submitted to the board?

A No, I do not remember.

Q Let me ask you to look at Exhibit 2530. This is a collection of letters exchanged between you and Mr. Schneider in November, 1993. First, let me just ask you to look through it, and I'm going to ask you if you recall any of this correspondence. Exhibit 2530, and it's a composite exhibit of various letters.

A All right, I have just flipped through this number of--a dozen pages.

Q Do you remember generally this exchange between you and Mr. Schneider within these few days in November, 1993?

A Vaguely.

Q Look at the first letter, if you will, the one from you to Mr. Schneider dated November 9, 1993. And at the top, he references a November 5 letter, and you say that, "I am still working with the Office of the Chairman to see if a meeting can be arranged this coming Friday. I will let you know as soon as arrangements can be confirmed." Do you see that?

(Whereupon, an objection was made to the form.)

A I see the sentence.

Q Were you discussing with your Chairman at that time meeting with the UIH people personally?

A Was I personally discussing with my Chairman personally?

Q Yes, were you discussing with your Chairman him meeting personally with the UIH people at that time?

A I cannot remember whether that was the case.

Q Look down at the--toward the bottom of the second paragraph where it says,"Emil had also informed me that UIH's potential investment in Wharf Cable may be mentioned as a possible use of proceeds under UIH's disclosure documents relating to future financing efforts. My personal view is that such mention would at present be premature, and we would need to work our way through the present round of discussions with our board before being able to present yourselves with clearer confirmation." Do you see that?

A Yes, I do.

Q What was the present round of discussions with your board that was going on at that time?

A I'm not sure whether this refers to a round of discussions with our board or working with our--working our way through our board in relation to the present round of discussions. But I do not remember whether there was any discussions with our board at that time.

Q Now, as of the time of this letter, had you briefed any of your board members with respect to the time and effort that UIH had put into the cable project?

A This was in November, 1993. I cannot recall precisely.

Q And after November 11, 1993, did you brief any of your directors regarding the time and effort that UIH put into the cabled project?

A I may have, but I cannot recall.

Q Other than conversations you had with Mr. Woo about UIH did you have any conversations with any other directors regarding UIH?

A It is quite possible that I had some conversation with some of the directors. They may have asked me questions about UIH, but I cannot remember the specifics.

Q Can you remember generally any discussions?

A No, I cannot remember any discussions.

Q Look over, if you will, at the letter that you sent to Mr. Schneider of November 11, 1993.

A Right.

Q Now, in the middle paragraph there on the second sentence, it says, "I'm afraid that if any member of our board were to be exposed to the comments outlined in the draft, or be subsequently questioned by a third party on matters relating to them, they may be left unprepared to offer corresponding confirmation." Do you see that portion of the sentence there?

A Yes, I do.

Q Did you ever have any members of your board discussing with you the manner in which UIH was representing its investment opportunity in the Wharf project?

A I cannot remember whether I did or not.

Q Look if you will, please, at Exhibit 2106. This is an October 17, 1992 memo from Mr. Fung to you and Mr. Hung regarding investor presentation on Wharf Cable. Take a look at that for a moment, please.

A 2106, October 17th. Okay, what would you like me to do?

Q Well, first of all, do you remember this memo and the attachment?

A No, not until now.

Q You don't remember this document?

A I did not.

Q Did you get a copy of it?

A This exhibit bears my handwriting, so it's evident I did receive a copy of it.

Q That's your handwriting in the lower center where it says, "Mr. PKC Woo "?

A That is correct.

Q Okay. And the handwriting to the left of that is that of Mr. Woo?

A That appears to be his handwriting.

Q Okay. Could you read to me what it says under your handwriting and under Mr. Woo?

A What I have written is as follows, "CC, Mr. PKC Woo - I am incorporating this story in the next Wharf Cable newsletter. Stop. John Hung has written a more generic piece for his road show in the meantime. Stop. My initials, 28-10-92."

Q Okay. And Mr. Woo gives his response then on the left; right?

A That appears to be his response.

Q Now, the story that you were incorporating in the next newsletter is this Wharf Cable, Our Investment Vision, by Emil Fung, right?

A Presumably, yes.

Q Okay. Now, look over on the second to last page marked WC-025773.

A I'm on that page.

Q And the two paragraphs beginning with the factors outlined above, could you read those to yourself, please?

A I'll take a minute to do so.

(Pause.)

A Okay, I've finished reading it.

Q Were those true statements contained in those paragraphs?

A I have no reason to believe they were not true statements.

Q Let me ask you about with respect to the statement, I'm going to ask about this statement, "As Wharf Cable proceeds towards implementation, its technical partners will continue to provide critical managerial expertise to ensure the achievement of the plan's operational and financial objectives." Do you see that?

A Yes, I do.

Q As of the time of this document, what was the basis for your belief that UIH would continue to provide critical managerial expertise to ensure the achievement of the plan's operational and financial objectives?

(Whereupon, an objection was made; no foundation.)

A At the time of this document?

Q Right.

A My memory is vague, but I believe the biggest factor was UIH's conduct.

Q Would you explain that, please?

A At the time of this letter, UIH was--

Q And what was the basis of that impression?

A Conduct.

Q Were you asking them to continue providing critical managerial expertise?

A I don't remember whether I asked them.

Q But you fully expected as of the time of this document, that they would continue to provide critical managerial expertise?

A I think so.

Q Let me ask you to look at Exhibit 2513. This is a handwritten note that appears to be from you to Mr. Fung dated January 14, 1993 regarding a conversation with Mark Schneider. Would you look that over for a minute, please?

A Exhibit 2513?

Q Right.

A Okay.

Q That is your handwriting; correct?

A It appears to be, yes. Okay.

Q Do you recall the conversation with Mr. Schneider described in this handwritten memo?

A I recall having a conversation with Mr. Schneider by telephone referred to in this handwritten memo.

Q And this was on or about January 14, 1993?

A That is correct.

Q Do you recall what you said to Mr. Schneider in that telephone call?

A I generally recall that I said to him the statement that was prepared previously for this conversation.

Q I'm sorry. The statement that was prepared previously, you meaning the lines to take?

A The line to take.

Q Did you read to him the edited version, the one that was edited by Mr. Woo?

A The version which was finalized; that's the version I would have read to him.

Q All right. And was the finalized version finalized in accordance with Mr. Woo's changes that are indicated on this third page of Exhibit 2112?

A It appears to be the case.

Q How is it you remember that you read this to Mr. Schneider?

A Because that was the intent. I intended to read it, the line to take.

Q Okay. And you believe that you read to him substantially verbatim what appears on the third page of Exhibit 2112; is that right?

A On the third page of Exhibit 2112? WC-025757?

Q Right.

A That is correct.

Q And do you remember anything else that you said in that conversation?

A I said to him other things. For instance, I said to him I would be in London in another week's time or so, and I said to him things like I've been trying to reach you since January 4th, and so on and so forth.

Q You told him you were trying to reach him since January 4th?

A Words to that effect.

Q Were you trying to reach him since January 4th?

A Indeed I was.

Q Let's look at Exhibit 2514. This is a document entitled Meeting Notes. It appears to be a meeting with you and Mark Schneider, Mark Booth and Mike Fries in London on 24, 1993. Let me hand you that.

Does this 2514 fairly and accurately summarize what was discussed with the UIH representatives in London?

A Let me take a minute to review it.

Q Sure.

(Pause.)

A To the best of my recollection, yes. But this was two and a half years ago.

Q At any time between January 1, 1993 and station launch, which is like the end of October, 1993, did you discuss partnership issues with UIH?

A That's in between --

Q January 1, 1993 and November 1, 1993.

A Of course I did.

Q You discussed partnership issues with UIH?

A Of course I did.

Q And you discussed UIH obtaining an equity interest in Wharf Cable during that period?

A Of course I did. In January, I made a telephone call to Mr. Mark Schneider, or maybe he called me, and we talked about partnership issues. That was when I advised him about the NYNEX decision.

Q Okay. Did you have any discussions on partnership issues after that and prior to November 1, 1993?

A Depends on what partnership issues it may include. For instance, when we met in London, if the--if questions were raised by UIH about NYNEX, about the NYNEX decision, about whether I knew what the NYNEX decision was and why it came about, and so on and so forth, if they also included, then yes.

Q From after your conversation with Mr. Schneider in January, 1993, until November 1993, did you have any discussion with a UIH representative regarding their potential acquisition of an equity interest in the Wharf Cable project?

A I may have, but only in relation to the subject being raised again after station opening.

Q Were you aware of any such discussions between Mr. Fung and UIH during that time period?

A I was generally aware that UIH was putting a lot of pressure on Wharf Cable to reopen partnership discussions.

Q And where you aware during that time period of conversations between Mr. Fung and UIH representatives regarding a UIH investment in the Wharf Cable project?

A Was I aware of?

Q Of conversations between UIH and Mr. Fung regarding the UIH investment in the Wharf Cable project?

A I was aware of some of those discussions.

Q By the way, you said Wharf would not discuss the ownership issue until after station launch; right?

A That is that we would not deal with the ownership issues until after station launch.

Q Whose decision was that? Was that your decision?

A That was the company's decision.

Q Who on behalf of the company made that decision?

A I believe the Chairman.

Q Mr. Woo made that decision?

A I believe so.

Q When did Mr. Woo make that decision?

A Shortly after the NYNEX decision not to participate at that time.

Q Did you participate in the decision with the Chairman, or was it solely his decision?

A I don't remember whether I participated, but I agreed with the decision.

Q Now, you say the partnership issues wouldn't be discussed until after service launch. Does that mean that there would be no conclusion of a deal until after service launch, or there would simply be no discussion of the subject?

A Certainly no deal until partnership (sic.) launch.

Q Okay.

A That's the important issue.

Q Well, what about discussions on the subject; was that also forbidden by you until after service launch?

(Whereupon, an objection was made; no foundation.)

A Discussions to the extent that they did not affect our project implementation and launch date could be condoned.

Q Did UIH ever refuse to provide any services requested of Wharf in connection with the cable project?

A I cannot remember.

Q Let's look at Exhibit 2518. This is a letter of February 27, 1993 from you to Mr. Schneider. Do you recall that letter?

A Now that you've shown it to me, yes.

Q This letter you remember; is that right?

A Now that you've shown it to me, I remember the letter.

Q All right. Now, on the point number two where it says, "I mentioned to you in London that given the NYNEX situation, we should put ownership issues on hold until after service launch," do you see that?

A Yes, I do.

Q Assuming Wharf had not made a payment to UIH for services provided in connection with the cable venture, can you tell me why Wharf hadn't made such payment?

A I don't know.

Q You are Chairman of Board of Wharf Holdings; correct?

(Whereupon, an objection was made; mischaracterizes the witness's testimony."

A No.

Q You are not Chairman of the Board of Wharf Holdings?

A No.

Q I'm sorry. Then I didn't understand. What is your position with Wharf Holdings?

(Whereupon, an objection was made; asked and answered three times.)

Q You can answer.

A Deputy Chairman.

Q Deputy Chairman. Have you ever made a recommendation in your role as Deputy Chairman that UIH be paid in connection with the cable venture?

A I don't remember whether I made a recommendation in my role as Deputy Chairman.

Q Have you made a recommendation in any capacity you've had with Wharf Holdings?

A I don't remember.

Q Generally, what kind of services do you believe were provided by UIH that you think UIH should have been paid for?

A Generally?

Q Generally.

A Services in relation to the project.

Q Can you give me a general description of what it is you thought they did for the project?

A For instance, at one stage, equipment of executives.

Q Okay, anything else?

A Helped us in relation to the selection of computer systems.

Q Anything else?

A They participated in the negotiation of--negotiation with the vendors for the decoder box.

Q Anything else?

A I can't recall.

Q What's your understanding as to why UIH did these things?

A Why they would do this?

Q Yes. What's your understanding as to why UIH did the things you just outlined?

A I don't know.

Q Did you have any understanding at the time as to why UIH was providing these services to Wharf?

A I presume they were interested in investing in the project.

Q Well, you knew that was their interest, didn't you?

A I knew that was the interest, but I don't know whether that's what drove them to provide the service.

Q Well, when UIH was doing what it was doing, did you think you had some agreement to compensate them for that, or not?

A Can you ask the question again, please?

Q When UIH was providing the services it was providing, did you believe you had some obligation, legal obligation, to compensate them for those services?

A No.

Q So did you have any understanding as to why UIH would be providing services where you weren't obligated to pay for them?

(Whereupon, an objection was made; asked and answered.)

Q Why would UIH do it if you weren't obligated to pay them for it.

(Whereupon, the same objection was made.)

Q Just giving you services?

A If somebody wants to give me services, who am I to refuse.

Q And so you thought that UIH just kind of volunteered, showed up and provided services; is that right?

A They were interested in investing.

Q And so it's your understanding that they were giving away services in the hope that some day somebody might invite them to invest?

A I don't know. I don't want to speculate why they did it.

Q Well, you believed you weren't under an obligation to let them invest; right?

A Right.

Q Did you think they had the same understanding?

A I don't know.

Q Did you ever ask them whether they thought they were entitled to invest?

A Did I ever?

Q Ask them why they were providing these services; do you think that you're entitled to invest in this project?

A I don't remember whether I asked them.

Q Did they ever express to you that they were providing the services on the expectation that they would be an investor?

A The question was?

Q Did they ever tell you they were providing the services under the expectation that they had a right to invest?

A I don't remember.

Q So they may have told you that?

(Whereupon, an objection was made; mischaracterizes the witness's testimony.)

Q Did anyone from UIH ever tell you that they were volunteering these services in the hope that they may be invited to invest?

A I don't remember.

Q Did they ever tell you something to that effect, whether they used those exact words or not?

A I don't remember.

Q Wouldn't it be a natural question as to what kind of payment or what expectation that a party had for these services?

A Not necessarily.

Q You mean somebody would be contributing services to you and you wouldn't have a question as to what do they want in return?

A Not necessarily.

Q Why not?

A I was testifying earlier I often times keep in contact with people in the industry and ask them for advice. When I pick up the phone to call somebody for advice, I don't ask myself or the person the question what do you expect me to pay you.

Q Did you and Mr. Woo discuss the subject of what did UIH expect in return for the services being provided prior the franchise application?

A I cannot remember.

Q Did you ever discuss with him what UIH would expect in return for the services being provided after the franchise application?

(Whereupon, an objection was made; no foundation.)

Q I cannot remember.

Q Did you ever discuss with the UIH representative what their expectation was with respect to compensation for services provided after the franchise application?

A I cannot remember having that discussion.

Q Did you ever discuss it with Mr. Fung?

A I cannot remember.

Q Let me ask you to look at Exhibit 2510. This is a July 23, 1992 memo from Mr. Fung to you regarding a UIH conference call and upcoming visit to Hong Kong. Have you ever seen this document before?

A I don't remember seeing it.

Q Look, if you will, please, at the last paragraph where it says, "As for the conference call, we will need to know how this team will be compensated." Do you see that paragraph?

A Yes, I do.

Q Now, it raises some possibilities with respect to compensation. I'd like you to read that paragraph to yourself, and then I'm going to ask you some questions.

(Pause.)

A Okay.

Q Now, the sentence, second sentence says, "Sonjia is of the understanding that the process will be part of their due

diligence efforts, but you may recall that Mark's letter envisioned some transfer pricing." Do you see that?

A Yes, I do.

Q Did you remember having any discussion of this subject in the summer of 1992?

A No, I do not remember.

Q Did you ever have an understanding that the UIH team's efforts would be part of their due diligence efforts?

A I don't remember any understanding. But as a matter of usual commercial practice, the time on your due diligence is your own time.

Q Well, did you understand that the services being provided by UIH to Wharf prior to the franchise application were simply UIH due diligence services, or they were services being performed on Wharf's behalf?

Q I don't remember any understanding.

Q And did you have an understanding as to whether compensation for those services was expected?

A I do not remember.

Q Did you have any discussions or understanding as to whether compensation would be appropriate?

A I do not remember.

Q And you don't recall any discussion within Wharf or with a UIH representative regarding transfer pricing with respect to those services?

A No, I do not remember.

Q This is a 1993 letter from Mr. Fries to Mr. Fung, and it shows a copy going to you, and it has some attachments it. It says, "We left the issue of UIH's ownership in Stephen's hands. He was to bring this up at the next Wharf board meeting. Since we have not heard from you on this, we have changed UIH's ownership right to include up to 20 per cent. Has there been any further discussion of the matter?" Do you see that?

A Yes, I do.

Q Now, what is -- what discussion is he referring to when he says, "We left the issue of UIH's ownership in Stephen's hands. He was to bring this up at the next Wharf board meeting"?

A I'm trying to recollect. My memory is very, very vague. But it looks like UIH wanted me to make a pitch to my board.

Q For a 20 per cent interest?

A For ownership.

Q You mean ownership at all?

A That's how I would today interpret this letter.

Q Well, do you have any recollection that that's what UIH wanted?

A Wanted 20 per cent?

Q No, wanted you to do, or expressed to you what they wanted you to do.

A I have no specific recollection, but it is probably fair to say that they were generally hoping that I would make a pitch for UIH to my board for an investment opportunity.

Q So as far as your understanding of what it would take to complete a transaction with UIH, is it true that you would need Wharf Holdings board approval?

A That is correct.

Q Would you need Wharf Cable board approval?

A I believe we do.

Q Would you have needed the approval of Cable Network Communications Limited's board?

A I believe we do, but I'm not the expert.

Q In your view, would it have been appropriate, prior to station launch, to raise the issue of UIH investment in Cable with any Wharf board?

A In my view, it would not have been appropriate to request any Wharf board prior to the Wharf Cable station opening to approve any investment by UIH or anybody else, a third party, in Wharf Cable Limited.

Q Is that because of the issue, the directive from the Chairman that there be no such determination prior to cable launch?

A That is correct.

Q Let me ask you to look at Exhibit 2524. This is a July 13, 1993 memo from Mr. Fries to Mr. Fung transmitting a marked redraft of an MOU. Have you ever seen the transmittal or the attached MOU draft?

A Exhibit 2524? From my quick review, I cannot recall seeing the transmittal fax before. The memorandum of understanding is a nine page document, and I don't remember whether I have seen this document or another document which looks like this document.

Q Well, let me hand you a July 15, 1993 memo from Mr. Fung to you, with an attached draft memorandum of understanding with United International Holdings.

A Thank you.

Q I ask you now if you recall seeing that?

A This is Exhibit 2404.

Q Exhibit 2404; correct.

A No, I'm afraid I do not recall receiving or seeing this memo from Mr. Fung.

Q Do you deny having received this memo and draft from Mr. Fung?

A No, I have no basis to deny it.

Q Now, let me ask you to look at the first page of Exhibit 2404, which is the transmittal. And the second sentence says, "This most recent proposal represents UIH's adopted position

following several rounds of negotiations with myself." Do you see that?

A Yes, I do.

Q Now, up to July 15, 1993, were you aware that UIH was involved in several rounds of negotiations with Mr. Fung on an MOU?

A I was generally aware that there were discussions between Mr. Fung and representatives of UIH about terms and conditions of UIH's possible investment in Wharf Cable Limited. But I cannot recall the timing of those discussions. I cannot recall whether there were several rounds of discussions, and whether or not there was a document called an MOU.

Q Can you think of any reason why you wouldn't have received this July 15, 1993 memo?

A I cannot sitting here today think of any special reason why I would not have received it.

Q I take it since you don't recall having received it or reviewed it, you also don't recall having considered any of the issues raised on the July 15, 1993 memorandum?

A Let me take a look at the issues.

Q Take your time.

(Pause.)

A I do not recall these specific issues being discussed at that specific time.

Q Do you remember any of these issues being discussed at any time during the summer or fall of 1993?

A I can vaguely remember some of these issues being discussed with me, but I cannot place it on the calendar as to whether it was the second quarter, third quarter or fourth quarter of which year.

Q When you say these issues being discussed with me, discussed with you by Mr. Fung or by somebody from UIH?

A Possibly by Mr. Fung, possibly by somebody from UIH. I have no specific recollection. Mr. Fung probably discussed some of these with me.

Q Did you discuss any of these issues with Mr. Woo during the summer or fall of 1993?

A No, I cannot remember.

Q Did you discuss any of these issues with any other Wharf board member during the summer or fall of 1993, or at any time thereafter?

A I'm sorry, I do not remember.

Q Is it correct to say that sitting here today, you can recall no discussion you had with UIH regarding terms of a memorandum of understanding in 1993?

A I do not remember sitting here today that in 1993, I discussed a draft MOU or anything like that with UIH.

Q Or any terms that would have been in a draft MOU?

A That's a difficult question to answer, because I would not know what terms an MOU would contain.

Q Okay. Fair question. Sitting here today then, can you remember no discussion regarding any terms as they would relate to a proposed MOU between UIH and Wharf?

A May I have the question read back?

(Whereupon, the pending question was read back.)

A As I was testifying earlier, I vaguely recall some of these issues were discussed with me, some of these issues which are contained in Exhibit 2404. So that would be my answer to your question.

Q Were any of these issues discussed with you in 1993?

A Possibly. I cannot precisely recollect.

Q Were any of these issues discussed with you by anyone from UIH?

A Possibly. I cannot clearly recollect.

Q Then is it also fair to say that you can't recollect any dispute regarding any issues relating to an MOU in 1993?

A It is correct. I cannot today remember whether there was any dispute of that nature.

Q Is there anything that would assist you in remembering this?

A Nothing particular that I can think of.

* * *

(Viewing of the videotaped deposition of S. Ng resumed on 3/3/97; Transcript 1757.)

(Whereupon, a portion of the video deposition of Stephen Ng was played for the jury.)

Q Look on the first page again of Exhibit 2404. You'll notice down the third line from the bottom, Mr. Fung "I offered that 10 per cent was more appropriate and was the basis of our original understanding." Do you see that?

A Yes, I do.

Q Do you know what original understanding Mr. Fung was referring to?

A I'll need to read that bullet point.

(Pause.)

A Reading that sentence today, I would preliminarily conclude that the basis of "our original understanding" would refer to the original intent of the parties, that subject to documentation, board approval, and so on and so forth, UIH would be invited to take up a 10 per cent investment in Cable Limited through CNCL.

Q That's your interpretation today; right?

A That would be my interpretation today.

Q But you had no discussions with Mr. Fung that would indicate to you what his intention was when he wrote this?

A No, I do not recall any discussion like that.

Q Now, look up at the above bullet point where it starts with "UIH's option," do you see that?

A Yes, I do.

Q Did you have any discussion regarding what a Euroversion option is?

A I don't remember any discussion like that.

Q Did you have any discussion regarding UIH's option?

A I don't remember discussing any UIH option.

Q Let me ask you to look at Exhibit 2405. It's a November 5, 1993 letter from Mark Schneider to you transmitting a draft memorandum of understanding. Do you recall that letter from Mr. Schneider?

A Let me take a minute to flip through it quickly. Until you showed this to me, I do not remember seeing this Exhibit 2405.

Q Have you ever seen it before?

(Whereupon, an instruction only to answer only to the extent you saw it in the past, and to exclude from your answer any conversations that you and I have had, or any of your lawyers and you have had; attorney/client privilege, work product.)

A That's what I mean when I said I had not seen this previously.

Q Now, look at the handwriting on the first page of Exhibit 2405. That's your handwriting, isn't it?

A Yes.

Q And it says, "Copy Emil. Views? Please prepare a reply." Did I read that correctly?

A The copy isn't very clear, but that seems to be the message.

Q Does this, the fact that you wrote on the document, indicate that you saw it?

A If I wrote on the document, would indicate that I saw it.

Q And the stamp in the upper right is a receipt stamp of November 8, 1993. Is that a Wharf receipt stamp?

A I cannot tell from this.

Q You don't deny having seen this document, do you?

A No, I don't deny having seen this document.

Q Look over at the second page of the letter, there's handwriting there as well that appears to say, "Secondary placement." Do you see that?

A Yes, I do.

Q That's your handwriting?

A I don't believe so.

Q Do you know whose handwriting that is?

A The reproduction quality is not very good, but it may be Mr. Fung's handwriting.

Q Okay. Now, did Mr. Fung comply with your request contained on the first page by providing you his views on this document?

A I cannot remember whether he did.

Q Do you recall discussing the November 5th letter and the draft transmitted with it with Mr. Fung at any time?

A I cannot remember.

Q Did you discuss the November 5th letter or the draft transmitted with it with Mr. Woo at any time?

A I cannot remember.

Q Or with any member of the Wharf Holding board of directors at any time?

A No, I cannot remember.

Q Or with any member of any Wharf board of directors at any time?

A I cannot remember whether I did.

Q When you received this, did you read it?

A I don't remember receiving it, and I don't remember reading it.

Q Would it have been your practice to receive--to read a document such as this directed to you?

A I'm sorry?

Q Would it have been your practice to read a document such as this?

A I get a lot of documents addressed to me every day, and I try to read as many of them as possible.

Q Would it have been your practice to read a letter such as this from Mr. Mark Schneider transmitting a draft MOU in November, 1993?

(Whereupon, an objection was made; no foundation.)

A I would try to read it if I had received it.

Q Did you ever discuss this letter or the attached draft with anyone from UIH?

A I do not remember whether I did or not.

Q Did you have any disagreement with any of the terms set forth in the draft attached to this November 5, 1993 letter?

A Did I have any disagreement with the draft MOU?

Q Any of the terms contained in the draft MOU.

A I do not remember reviewing this draft and, therefore, cannot answer your question.

Q Is there some reason you wouldn't have reviewed this draft?

A If I did not receive it, I would not have reviewed it, for instance.

Q Of course, since you wrote on it, we know you received it; right?

A I don't know whether I wrote on it. But assuming I did receive it, it is quite possible that I still did not review it.

Q Is there some reason why you wouldn't review this draft?

A This is a legal document, and it would not be unreasonable for me to request a professional--a legal professional to review it, rather than myself.

(Whereupon, an objection was made; calls for attorney/client privilege. Directed not to respond.)

Q So if I were to ask you did you ask an attorney to review this, would you follow your counsel's instructions and not answer that question? Well, wait a minute. I think you can answer that question. Let me ask the question.

Did you have conversations with counsel about the draft MOU attached to this letter?

(Whereupon, the same objection was made; same instruction.)

Q All right, let me just go back to you then. Apparently you won't answer that question; right?

A I was instructed not to answer.

Q All right. Let me go back to you. Is the reason you're giving as to why you might not have read this draft because it's a legal document and that's something you have lawyers look at?

A That's a possible reason.

Q Is that the reason?

A I do not remember receiving it.

Q Okay. So you don't remember any reason why you wouldn't have read this draft; is that right?

A In the first place, as I said, I do not remember receiving it, so I cannot remember any reason why I would not have read the draft if indeed I did receive it.

Q And a moment ago, you questioned whether you wrote on the first page. Let's make sure we've established that. That's clearly your handwriting on the first page of that document; right?

A On this photocopy document, Exhibit 2405, I have no reason to dispute this is my handwriting.

Q Now, it also says that, "Emil, please prepare a reply," doesn't it?

A Yes, it does.

Q And did Mr. Fung prepare a reply for you?

A That is something I cannot remember.

Q Now, in between July 15, 1993 and November 5, 1993, did you have any communication with anyone at UIH regarding a draft MOU?

A I'm afraid I cannot remember.

Q And from June 1, 1993 until November 5, 1993, did you have any conversations with the Chairman where you advised him that Wharf and UIH were exchanging draft MOUs?

A Between June 1, 1993--

Q And November 5, 1993.

A Did I?

Q Have any conversations with the Chairman in which you disclosed to him that UIH and Wharf were exchanging draft MOUs?

A I may or may not have, but I don't remember.

Q Did you disclose to the Chairman at any time before the end of 1993 that Mr. Fung had been involved in several rounds of negotiations during 1993 with UIH regarding an MOU?

A I do not myself clearly recall that Mr. Fung had several rounds of negotiation with UIH with regard to an MOU and, therefore, I do not believe and do not remember, rather, that I advised Mr. Woo to that effect.

Q Okay. As of the end of 1993, were you aware of any disagreement between Wharf and UIH as to the terms of a proposed MOU?

A I don't remember. I was not focusing on that subject.

Q And as of March 18, 1994, were you aware of any disagreement between Wharf and UIH over the terms of a proposed MOU?

A I do not remember. But when you said the--in terms of disagreement; is that the term you used?

Q No. I said as of March 18, 1994, were you aware of any disagreement over terms of a proposed MOU between UIH and Wharf?

A I do not remember if your question relates to on the Wharf side, the executive or the executives who were representing Wharf in the negotiation. But if your question refers to Wharf as a company, then I don't believe that is a relevant question, because no MOU to my recollection was submitted to the Wharf board for approval by the company.

Q Okay. Let me ask a question. As of March 18, 1994, were you aware of any dispute between negotiators for Wharf and negotiators for UIH regarding the terms of a proposed MOU between Wharf and UIH?

A I thought I answered that question earlier, and the answer is I do not remember whether there were any areas of disagreement.

Q And as far as you're concerned, as far as Wharf, the company, goes, there couldn't be areas of dispute, because Wharf, the company, was not even considering the possibility of an MOU with UIH at that time?

A I don't remember having submitted an MOU, in draft form or otherwise, to Wharf, the company, for consideration.

Q And do you recall even mentioning to any Wharf director up to March 18, 1994, that an MOU was being discussed by negotiators for Wharf and for UIH?

A I don't recall having any conversation to that effect.

Q I'm going to make this Deposition Exhibit 2616. Let me hand you Deposition Exhibit 2616, a July 29, 1993 memo from you to Mr. Mark Schneider, and ask if you remember this, please?

A No, I do not remember this communication.

Q Okay. The communication indicates that you will attempt to review an MOU as soon as possible; is that correct?

A That is what the communication says.

Q And did you in fact after the date of this communication ever review a draft MOU?

A I cannot remember.

Q And did you after this date ever get back to Mr. Schneider and discuss with him the terms of a proposed MOU?

A I do not remember.

Q Let me ask you to go back and look at Exhibit 2082. These are your weekly reports to the Chairman, and ask if you would turn your attention to the report for May 28, 1993. I'd like you to look at the second page of the May 28, 1993, WC-21590.

A May 28, 1993?

Q Right.

A I only have one page.

Q You only have one page? Let me see that page a second, please.

A Unless it's somewhere else.

Q Look at Page WC-21592, which is a June 4, 1993.

A Okay. I'm looking at 21592.

Q Okay. And down at the bottom, it says, "Partnership discussions with UIH in suspension. TCI also expressed interest in equity participation." Do you see that?

A Yes, I do.

Q Okay. Now, if you'd flip back to the June--to the May 28th entry, it also indicates, "Partnership discussion with UIH in suspension." But the TCI appears to be deleted from that. Do you see that?

A This is 21466?

Q Yes.

A Yes, I see that.

Q All right. What occurred on or about May 28, 1993 that caused you to advise the Chairman the partnership discussions with UIH were in suspension?

(Whereupon, an objection was made; no foundation.)

A I cannot remember.

Q Why was that being entered on the weekly report of May, 1993?

A I cannot remember.

Q When did the partnership discussions go into suspension?

A From January, 1993.

Q Why then was it not noted to the Chairman until May 28, 1993 that partnership discussions were in suspension?

A I cannot remember.

Q Can you remember any event that prompted you to put into your May 28th report that partnership discussions with UIH were in suspension?

A No, I cannot remember.

Q Did you have a discussion with Mr. Woo at or about this time regarding partnership discussions being in suspension?

A I cannot remember.

Q Did you discuss with Mr. Fung partnership discussions being in suspension?

A I'm sorry, I cannot remember.

Q Did you disclose to anyone from UIH that partnership discussions were in suspension?

A I do not remember, sorry.

Q What did you understand it to mean that partnership discussions were in suspension?

A I understand that to mean discussions, partnership discussions with UIH were in abeyance.

Q Does that mean all partnership discussions with UIH? Is that what you understood that to mean?

A It doesn't say all discussions, so I cannot conclude that.

Q Well, what were you trying to tell the Chairman by this reference?

A I'm afraid I cannot remember.

Q How do you reconcile the negotiations between Mr. Fung and UIH on the MOU with partnership discussions being in suspension?

A I do not remember how I reconciled the one with the other.

Q Can you reconcile them now?

A I cannot remember what I meant when I apparently reported to the Chairman in this language.

Q Looking at Exhibit 2616, your memo to Mr. Schneider of July 29, 1993 when you told him that you would review the draft MOU as soon as you could, how do you reconcile that with partnership discussions being in suspension?

(Whereupon, an objection was made; no foundation.)

A Again, my answer is I cannot remember what I meant when I made this report to the Chairman at the end of May, 1993 and, therefore, I cannot reconcile one with the other.

Q And is it a fact also that at no time did you ever advise UIH that you had reported to the Chairman that partnership discussions were in suspension?

A I cannot remember whether I did or I did not.

Q Well, I didn't ask about a formal document. Are you aware of any such agreement among UIH, Wharf Communications or any other Wharf entity?

A I am of the view that as a result of the discussions and exchanges of correspondence taking place in January, and possibly extending into February, 1993, there was an agreement that Wharf Communications would not consider any equity interest in Wharf Cable until after service and upon the formation of a new consortium acceptable to Wharf Holdings, Wharf Communications and Wharf Cable, but I'm saying this only in the context of what I read in this paragraph.

Q And let me hand you also Exhibit 2536, which is a portion of a prospectus relating to a UIH IPO, the prospectus dated July 22, 1993, with Wharf Cable Bates Stamp Numbers in the lower right corner.

Now, first, let me ask you do you recall receiving the Smith Barney notification?

A I don't remember whether I received it or not.

Q Do you recall being generally aware during the time frame of the Smith Barney notification of the impending UIH IPO?

A As I was saying earlier, I am aware that UIH was raising funds from time to time during the period when there were discussions between UIH and Wharf, but I do not have recollection as to what kind of fund raising they were, and the timing of those exercises.

Q At any time between June 1, 1993 and the end of 1993, did you believe that UIH and Wharf were engaged in good faith

negotiations over the acquisition by UIH of a 10 per cent interest in the Wharf Cable project.

A My memory is very vague for the period June 1, 1993 to the end of 1993. I cannot recall whether specifically either Wharf--rather, I cannot recall specifically whether Wharf and UIH were negotiating in good faith.

Q Did you believe that in connection with the various drafts of the MOU being discussed between Wharf and UIH, Wharf was acting in good faith with respect to those?

A The MOUs which you showed me yesterday?

Q Correct.

A And the question was?

Q Did you believe that Wharf was acting in good faith with respect to those MOUs?

A I do not remember whether at that time I believed we were--Wharf was acting in good faith, but I have no reason to believe that at any time in that June to December, 1993 time frame, Wharf was not acting in good faith.

Q So is it your testimony that in connection with those MOUs, Wharf was in good faith trying to consummate a transaction with UIH?

(Whereupon, an objection was made; mischaracterizes the witness's testimony.)

A I cannot remember what my belief was at that time specifically, but I have no reason to believe that at any time within that period, Wharf was not negotiating in good faith.

Q What is your understanding of negotiating in good faith?

A To me, negotiating in good faith is negotiating with a goal of finding out whether there can be agreement or not.

Q After May 28, 1993 when you advised the Chairman that partnership discussions with UIH were on hold, was Wharf negotiating in good faith with UIH?

(Whereupon, an objection was made as to form.)

A May I have the question read back, please?

Q Yes. Following May 28, 1993, at which time you advised the Chairman the partnership discussions with UIH are in suspension, did you thereafter negotiate in good faith with UIH over an MOU?

(Whereupon, the same objection was made.)

A I testified earlier that I cannot remember specifically whether during the period from June to December, 1993 Wharf negotiated in good faith, but I have no reason to believe that Wharf was not negotiating in good faith at any time during that period.

Q Why would Wharf negotiate in good faith after a period of time when you advised the Chairman that partnership discussions with UIH were in suspension?

(Whereupon, an objection was made to no foundation, and to the form.)

A I do not remember why.

Q Do you recall receiving a telephone call from Mr. Elsner following the completion of the IPO, discussing the results of the IPO with you?

A No, I do not recall a telephone conversation from Mr. Elsner to that effect.

Q Do you recall a telephone conversation with Mr. Elsner during the summer of 1993 on any subject?

A No, I'm afraid I don't.

Q Do you recall discussing with Mr. Elsner in July, '93 or August, '93, UIH's successful IPO and its intent to invest in the Wharf project?

A No, I do not remember that.

Q Do you recall Mr. Elsner telling you that UIH was ready to exercise its option to invest in the Wharf project?

A I certainly do not recall being apprised by Mr. Elsner to that effect.

Q Do you recall any conversations with Mr. Elsner in the July-August, 1993 time period regarding UIH's capability of investing in the Wharf Cable project?

A No, I don't recall having any conversation with Mr. Elsner at about that time.

Q Now, if Mr. Elsner were to testify that he did tell you in July or August, 1993, that UIH had its money and was ready to invest in the project, would he be mistaken, as far you can tell?

(Whereupon, an objection was made as to form.)

A I do not remember whether I spoke to him and--I cannot comment on this.

Q So you just don't recall one way or another?

A No, I do not recall one way or another.

Q Now, the last sentence states, "The company has the opportunity to acquire a minimum of 10 per cent of the equity in Wharf Cable, with Wharf Holdings maintaining the remaining portion." Do you see that?

A Yes, I do.

Q Was that a true statement in July, 1993?

A I would have two comments. First of all, I do not understand what the word opportunity means, and as a result of that, I cannot comment on whether the first half of the sentence reflected the situation at the time. My second comment relates to the second half of the sentence, namely "with Wharf Holdings maintaining the remaining portion." That implies that there would only be two shareholders in Wharf Cable, and that would not have been consistent with our interest and intent.

Q Look, if you will, please, at Exhibit 2115. This is a September 16, 1993 handwritten note that appears to have been written by you to Mr. Fung, saying "Emil, didn't get far with Chairman. More interested in a telecom partner. How do we get out?" Do you see that?

A Yes, I do.

Q And that appears to be your initials down at the bottom?

A That is correct.

Q And it's dated September 16, 1993?

A That is correct.

Q Have you ever seen this document before?

(I'll instruct you again answer, excluding from your response conversations that you and myself or any other lawyer had on the basis of the attorney/client privilege and work product doctrine.)

Q Can you tell me, please, what prompted this note to Mr. Fung?

A I cannot clearly recall, but sitting here today interpreting the note, it appears I had a conversation with the Chairman before I wrote this note, and that conversation may have prompted this note. But I do not recall the conversation or whether or not a conversation did indeed take place.

Q You recall then nothing about what prompted this note?

A Not presently.

Q Were you discussing with the Chairman in this time period the UIH interest in obtaining an investment in the Wharf Cable project?

A I may have been, but I have no recollection.

Q Did the Chairman indicate to you that he was more interested at that time in having a telecom partner?

(Whereupon, an objection was made as to form.)

A I cannot remember.

Q Did the Chairman indicate to you that you should develop a strategy to get out of your relationship with UIH?

(Whereupon, the same objection was made.)

A I do not remember.

Q Do you remember any discussions with the Chairman in September, 1993 relating to how do we get out?

A I'm not sure what "how do we get out" means. Get out of what? And I don't remember.

Q Were you in something that you needed to get out of at that time?

A Was I in something that I wanted to get out of?

Q Not you personally. Was Wharf in something that it needed to get out of at that time?

A I cannot remember what this may refer to.

Q Now, the day before this memo, you had a meeting with the Chairman regarding UIH; right?

A The day?

Q The day before this note, you had a meeting with the Chairman regarding UIH; correct?

A I do not remember whether I had a meeting with the Chairman.

Q Okay. Now, your meeting notes indicate that you did; right?

A There was a date on the meeting notes, but--

Q Look at 2084.

A Right.

Q And look at the September 15, 1993 meeting notes.

A It actually says September 9th, and then somebody crossed it out to change it to 15.

Q Okay.

A So I don't know which is more accurate, and I do not recall that the day before the date of this note I had a meeting with my Chairman.

Q Well, sometime in that first two weeks of September, you met with the Chairman and discussed UIH, didn't you?

A I cannot remember.

Q And the Chairman instructed you to do what you had to do to get out of the relationship, didn't he?

(Whereupon, an objection was made; no foundation, and argumentative.)

A (A) I do not remember meeting with the Chairman, and (B), therefore, I do not remember what instruction, if any, he gave me. And see, I'm not sure what you're referring to when you say "to get out of the relationship. "

A Well, I'm asking you what you meant by "how do we get out. "

(Whereupon, an objection was made.)

Q How do we get out of what, Mr. Ng?

(Whereupon, an objection was made; asked and answered.)

A As I said, I don't have a good recollection of what happened at that time. Looking at the date, the September time frame, and looking at the reference to "partner," it may be we were--I was referring to the pressure that I was referring to earlier in my testimony today, that UIH was landing on Wharf for a solution to their investment.

Q So is that what you were referring to by "how do we get out," or are you just guessing today.

A I am guessing today.

Q Did Mr. Fung give you an answer or a proposal as to how you would get out?

A I cannot remember whether he did or not.

Q Did you and he discuss a plan as to how you would get out?

A I do not remember.

Q Did you report to the Chairman that you had a plan on how to get out?

A I do not remember, and I do not remember even whether that was what I was referring to when I asked "how do we get out. "

Q Whether what was what you were referring to?

A Whether it was a, what do you call it, theory or guess, rather. It could be that the question "how do we get out" referred to how do we get out of this discussion with the Chairman, I don't even know. It was 20 months ago. I don't remember.

Q It wasn't important enough for you to remember now, was it?

A That is not what I said.

Q Let me ask you to look now at Exhibit 2531. This appears to be a handwritten note from Mr. Fung to you. Would you look at that for a moment, please?

A Yes, I will.

Q Have you ever seen this document before?

A I don't remember seeing it.

Q That is your handwriting in the upper right, is it not?

A It's not a very reproduction, but it appears to be my handwriting.

Q And your initials?

A It appears to be my initials.

Q And the body of the document appears to be a memo from Mr. Fung in his handwriting?

A That appears to be the case.

Q Now, this memo follows the correspondence that we've just been discussing, and Mr. Fung indicates in the first line, "The proper legal disclosures have been inserted in the language." Do you see that?

A Yes. It's not clear, but --

Q Did you discuss the propriety of the disclosures with Mr. Fung?

A I'm sorry. You said disclosures? It doesn't look to me--

Q I'm sorry. You're right. It looks like the word is the proper legal disclaimers.

A Well, it's not disclosures. I don't know what that word is.

Q Did you discuss with Mr. Fung the matters contained in that first paragraph?

A I don't remember doing that.

Q Now, clearly, in that paragraph, he's calling to your attention that the language speaks to an opportunity to acquire a 10 per cent interest in Wharf Cable; right?

A That's what this paragraph in front of me says.

Q It does not assist you in recalling whether you focused on that word "opportunity" at the time in November, 1993?

A I don't remember having a discussion with Mr. Fung over this matter.

Q You don't deny receiving this memo, do you?

A No, I'm not denying receiving this memo.

Q Now, the next paragraph says, "Our next move should be to claim that our directors got quite upset over the representations." Do you see that?

A Yes, I do.

Q Did you discuss with Mr. Fung what he meant by "Our next move should be"?

A No, I cannot remember doing that.

Q Did you have any understanding at the time of what he meant by "Our next move should be"?

A I cannot remember.

Q Did any of your directors get upset over the representations?

A Sorry, I cannot remember.

Q Did any of your directors instruct you to settle up on the TCA only?

A I cannot remember.

Q Did you discuss with Mr. Fung that publicly you would not acknowledge the opportunity, but speak only to UIH's involvement vis-a-vis the TCA?

A I cannot remember whether I did that or not.

Q Did you discuss any of this material with Mr. Fung?

A I cannot remember receiving this memorandum, and I cannot remember discussing any of this material with Mr. Fung.

Q Let's look up at your handwriting in the upper right where it says, "Emil - Please initiate," and then it has the asterisk there. Do you see that?

A Yes, I can see what you're referring to.

Q And in the body of the memo, there's an asterisk before the phrase, "Our next move should be."

A Yes, I can see that sign, too.

Q And did Mr. Fung, therefore, initiate and go forward with the recommendation contained in that paragraph that begins with "Our next move should be"?

(Whereupon, an objection was made; no foundation.)

A That is not something I can remember.

Q Why were you instructed him to initiate the plan set forth in that paragraph?

(Whereupon, an objection was made; no foundation.)

A I cannot remember instructing him to take any action of that kind.

Q What did you mean by "Please initiate," and then the star?

A I cannot remember making that instruction.

Q You remember nothing about this?

A No, not as I sit here today.

APPENDIX BE

Excerpt from Direct Examination of W. Hudon

March 4, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 3996-3997; Transcript 1870-1871)

Excerpt from Direct Examination of W. Hudon

March 4, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 3996-3997; Transcript 1870-1871)

bankers regarding that subject?

A Yes.

Q And, did they have questions about that subject?

A It depended. There were a few banks that we were talking to also about the possibility of an equity investment, and we discussed that particular aspect of the transaction more with them than the others.

Q What do you mean by that, an equity investment?

A Well, as I mentioned, we were also talking to various groups about the possibility of investing with us in the Wharf Cable system.

Q All right. Let's move on to another document here. We're going to jump forward in time this time to January of 1994, several months after your bankers' trip, and this is Exhibit 1348 which is a document produced from Wharf's files and it says here, "Wharf Cable Limited which launched an eight channel subscription television service in Hong Kong last October 31, four months ahead of its license commitment, today finalized a Hong Kong $900 million bridge and credit facility with a group of six banks." Then, it says down at the bottom here, "The six banks participating in the Phase I financing are Bank of China, Chase-Manhattan Bank, Chemical Bank, the Long-Term Credit Bank of Japan, Morgan Guarantee Trust Company, and National Westminster Bank." Now, were any

of those banks the banks that you took to Hong Kong on your bankers' tour six months before?

A Yes. With the exception of Bank of China and Morgan Guarantee Trust, I believe they were all on the bank trip. In the case of Morgan Guarantee Trust, they were unable to make the bank trip, but they went over separately several weeks after.

Q All right. Are you aware that there was a subsequent meeting with the bankers in September of 1992? Pardon me, September 1993; I misspoke?

A Yes.

Q Did you participate in that trip?

A I did not. After the banking trip, the detailed negotiations on the debt financing for the project were handled locally by Wharf. Most of the banks had turned over the underwriting or the credit review for the project and the day-to-day work on the financing to their local offices in Hong Kong and they worked directly with Wharf.

Q I'm sorry, can yo speak up just a little bit? I think the tail end of your answer dropped off there.

A And, they worked directly with Wharf.

Q And so, you've gone from the North American banks that you brought on your trip to the Hong Kong centered banks who were kind of finishing the transaction. Is that right?

A Well, we're talking about the local office of these banks. In other words, Chase-Manhattan is based in New York,

APPENDIX BF

Excerpt from Direct Examination of W. Hudon

March 4, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 4000-4002; Transcript 1874-1876)

Excerpt from Direct Examination of W. Hudon

March 4, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 4000-4002; Transcript 1874-1876)

bottom, it has, "Strategic partners, none identified at present. "Did Mr. Fung ever tell you that?

A I don't have that in front of me.

Q Oh, sorry. It should be the last document in your pile.

A Okay.

Q It's 1266.

A I don't believe I've ever seen this document.

Q So, you hadn't seen this document before I showed it to you right now? Let me put it this way. Had you seen it before this litigation arose?

A Correct.

Q And, did Mr. Fung ever tell you that no strategic partners were identified?

A No.

Q If you had known--I withdraw that question. I'm going to move--I can finish here quickly. Let me just move to another topic. I'm going to move over here to the easel and I'm not sure if we gave a copy of this to you on the witness stand. So, if you could come over to the microphone over here, we'll just have a conversation over here. I'm just going to pull this microphone out of jury's way here. Now, this is a document

that was prepared--why don't you come over here. Yeah, very good. This is a document that was prepared based on some records in UIH's files. This says that you recorded 70 hours pertaining to Hong Kong project. It says, "Only recorded and allocated some of time spent on project." Did you prepare time records in connection with your work on the Hong Kong cable project?

A I did not. Typically, the weekly time charts in my case were prepared by my secretary and she'd look on my calendar. So, if I hadn't recorded exactly what I was doing on Wharf on my calendar, she wouldn't necessarily have picked it up.

Q All right. Do you believe that the 70 hour number is accurate, overstated, understated, or something else?

MR. TULLY: Objection; leading, Your Honor.

THE COURT: It gives him enough choices. Overruled.

THE WITNESS: I think it's substantially understated.

Q (by Mr. Wilson) Do you have an estimate as to how many hours in excess of 70--or how many hours total you would have spent in connection with working on the Hong Kong cable project?

A I don't have a very precise estimate. Just the bankers' trip alone would have probably required 70 hours of time in preparation.

Q And, did you spend time in excess of the 70 hours or was that the only thing you were working on?

A Well, there were the other trips to Asia. There were times spent preparing documents to distribute to prospective investors

and bankers and so forth. So, there was a lot of other time spent.

Q Do you have an estimate in excess of 70 hours how much time was spent?

MR. TULLY: Objection, Your Honor. The witness has already said he doesn't know.

THE COURT: Overruled.

THE WITNESS: Well, I would say it was at least two or three times more than what's there.

Q (by Mr. Wilson) All right. Very well. You can go back to the witness stand. Thank you. Now, Mr. Hudon, I'd like to talk to you in closing here about the impact you spending the amount of time that you spent on the Hong Kong project on what you're able--the time you devoted on--poor question. I'm getting tongue-tied here. I'd like to talk to you about the impact, if any, of the time that you devoted to the Hong Kong project had on what else you were able to do within UIH? What's your reaction to that?

MR. TULLY: Objection, Your Honor.--question to the witness.

THE COURT: Sustained.

Q (by Mr. Wilson) Mr. Hudon, if you're spending the time that you spent on the Hong Kong project, do you have a view as to whether that impacts other things that you're trying to do with UIH and, if so, what is that impact, if any?

MR. TULLY: Objection; that's leading.

THE COURT: Overruled.

APPENDIX BG

Excerpt from Deposition Testimony of S. Ng

March 4, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 4078-4108; Transcript 1825:1-31)

Excerpt from Deposition Testimony of S. Ng

March 4, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 4078-4108; Transcript 1825:1-31)

(Whereupon, a portion of the video deposition of Stephen Ng was played for the jury.)

Q Please look at Exhibit 2049. This is a November 24, 1993 bi-weekly meeting with Chairman document; correct?

A That is what the heading on this page says.

Q And the handwriting on the page is whose?

A There appears to be two kinds of handwriting on this page--or three, including what is in the exhibit label.

Q All right. What about the handwriting that says,"Disagree. Suggest delete." That's Mr. Woo's handwriting; correct?

A That appears to be Mr. Woo's handwriting.

Q Now, this would relate to a meeting on November 24, 1993 between you and the Chairman; correct?

(Whereupon, an objection was made; no foundation.)

A I'm not sure. But that's what the heading of this document suggests.

Q Do you have any other explanation for this document?

A I don't remember seeing this document, and I cannot have any explanation without remembering this document.

Q The typewritten portion of the document was prepared by you; correct?

(Whereupon, witness was advised question means authored, not physically typed.)

Q I'm not asking whether it was typed by you. I mean you were the author of the substance of the material contained in the typewritten portion of Exhibit 2049; right?

A I cannot remember, but the initials at the bottom of the page suggest that was the case.

Q And it was your practice to prepare this kind of document for your bi-weekly meetings with the Chairman; correct?

A I don't remember whether that was my practice or not.

Q Who else would prepare the documents for your bi-weekly meetings with the Chairman?

A The documents meaning?

Q The documents such as Exhibit 2049.

A I cannot remember. But generally, there were times that staff in the Chairman's office may prepare records of meetings.

Q Records after the meeting occurred?

A Records of meeting, obviously after the meeting occurred.

Q Okay. This is an agenda for a meeting; is it not?

A I don't know what it is. I cannot remember what it is.

Q Was this prepared after the meeting?

A I cannot remember.

Q Well, let's look at the middle of the page where it says, "UIH, start to back pedal." Do you see that?

A I see the reference.

Q What did you mean by that?

A I don't remember seeing this document. I don't remember what I may have meant with this.

Q Well, you obviously had to see it if you prepared it, didn't you?

(Whereupon, an objection was made; argumentative.

A I don't remember preparing this.

Q Do you deny preparing it?

A I don't deny preparing it.

Q Do you deny that the phrase "Start to back pedal" was your phrase?

A I don't deny, but I cannot confirm.

Q Now, the Chairman writes, "Disagree. Suggest delete." Do you see that?

A Yes, I do.

Q Did you have a discussion with him regarding that?

A I cannot remember whether I did or not.

Q You recall nothing at all about this document that says "Start to back pedal," and then the Chairman saying," Disagree. Suggest delete"?

A No, I cannot recall.

Q Look at the A, B and C under the Paragraph 3. What was that? Was that something that you and the Chairman talked about?

(Whereupon, an objection was made as to form; compound.)

A I cannot remember what it was.

Q As of November, 1993, were there two schools of thought on the board regarding a UIH investment in the Wharf project?

A I cannot remember.

Q As of November, 1993, was there any issue with respect to whether the JLG would be a problem for a UIH investment in the Wharf Cable project?

A I cannot remember.

Q What did you mean by activate the TCA?

A I don't remember saying activate TCA.

Q You don't deny that that's something placed there by you, do you?

A I do not deny, but I cannot confirm.

Q As of November 24, 1993, was it your understanding the TCA had not been activated?

A I cannot remember what my understanding was at that time.

Q Do you recall anything about your meeting with the Chairman in November, 1993 on these subjects?

(Whereupon, an objection was made; no foundation.)

A I don't remember whether I met with the Chairman in November, 1993 on these subjects.

Q Do you remember having any discussions with the Chairman in 1993 on these subjects?

A No, I'm afraid I cannot remember.

Q Why is it you can't remember this?

A This was a busy time, too. I cannot remember.

Q Are there any documents that would assist in refreshing your recollection that you're aware of?

A There's nothing that I can think of as I sit here today.

Q Look, if you will, please, at Exhibit 2118-A. First of all, do you recall this document at all?

A No, I didn't.

Q That is your signature on the front page; right?

A That is my initials.

Q And that's Mr. Woo's handwriting all over the various pages; correct?

A That appears to be the case.

Q And do you recall this meeting you had, or dinner you had with Mr. Elsner and Mr. Schneider in Los Angeles in December, 1993?

A I can vaguely recall.

Q Does the information contained on the second page, the one that starts with UIH, and then has six numbered paragraphs, is that a fair summary of what you talked about with Mr. Elsner and Mr. Schneider as it pertained to cable television?

A I'm reading it.

(Pause.)

A That appears to be the case.

Q You don't remember anything else discussed at that meeting relating to cable television?

A I don't.

Q And do you believe that this was accurate at the time you wrote it down?

A I believe so.

Q Now, there's an indication under Paragraph 4, "Encouraged them to activate TCA, but they were careful not to take the bait." Do you see that?

A Yes, I do.

Q Do you understand TCA to mean technical cooperation agreement?

A Yes, I do.

Q And that would have been what we were talking about as Exhibit 2059?

A Right.

Q And as of this date, that technical cooperation agreement was not activated; is that right?

A I can't be sure.

Q To your knowledge, was the technical cooperation agreement ever activated?

A I'm not sure.

Q When you say you're not sure, do you believe it might have been, or you don't have a view one way or another?

A I don't know whether it's been or it hasn't.

Q Do you know whether Wharf has ever made any changes under the technical cooperation agreement?

A I don't know.

Q Do you know whether the technical cooperation agreement required Wharf to make payments?

A I don't remember.

Q If Wharf didn't make payments under it, do you understand it to be a breach of contract under the agreement?

(Whereupon, an objection was made; no foundation, and calls for a legal conclusion.)

Q You can answer.

A It depends on what the TCA says.

Q You haven't reviewed that?

A No, I have not reviewed it.

Q At the time of this dinner with Mr. Schneider and Mr. Elsner, had you reviewed the TCA?

A I don't remember.

Q Prior to this dinner in 1993, had you ever discussed the TCA with any UIH representative?

A I can't remember.

Q What did you mean in your memo here "They were careful not to take the bait"?

A I don't remember.

Q In what way were you using the TCA as bait?

A I don't remember.

Q Do you remember anything at all about why you wrote that sentence in Sentence 4 there?

A Why I wrote it?

Q What it means?

A It means what it says.

Q Why did you want UIH to activate the TCA at that time?

A I don't remember.

Q Why hadn't the TCA been activated up to that time?

A I don't remember.

Q Did UIH agree to activate the TCA in response to your suggestion in December, 1993?

A I don't remember.

Q Do you know if it was ever activated?

A I don't know.

Q Did you ever make a payment to UIH under the TCA?

A I don't remember.

Q Did you ever offer to make a payment to UIH under the TCA?

A I don't remember.

Q Let's look at Exhibit 2118-B. It's a December 13, 1993 letter from you to Mark Schneider. Please look that over for a moment.

A 2118-B?

(Pause.)

Q Have you had a chance to review that?

A Yes, I have.

Q Now, again, you renew your invitation for the TCA to be activated independent of the investment outcome; do you see that?

A Yes, I do.

Q What did you mean by that, "independent of the investment outcome"?

A Whether or not UIH eventually invested.

Q Well, to the best of your recollection, did you believe you at least had a moral obligation to UIH at this time?

A What moral obligation?

Q A moral obligation to give them some kind of an equity interest in the cable project.

A No.

Q When I say give, I meant sell them some kind of an equity interest in the cable project.

A No.

Q You didn't believe you had a moral obligation to do that?

A No.

Q Did you believe you had a moral obligation to compensate them in some way for what they had done in connection with the cable project?

A Generally, I believed in paying them for some of the work we had done.

Q Paying them for services rendered?

A Yes, you can say that.

Q And that's a belief that you had as of approximately December, 1993?

A I don't remember whether it was at that time or at any other time, but generally, as I said, I considered it appropriate to pay them some money.

Q Mr. Ng, earlier in the deposition, I asked you about this Exhibit 2118-A. This is a memo regarding a December 9, 1993--this is a memo of December 9, 1993 from you to Mr. Woo regarding a conversation with UIH. Let me ask you a few more questions about that, if I can, please.

A Sure.

Q Now, was that reflective of a meeting you had with UIH at the time of the Western Show?

A I don't remember this document, but Page 2 of the exhibit records that I had dinner with Bill Elsner and Mark Schneider in Los Angeles on 1 December 93. Western Shows are ordinarily held at around that time, so that may have been the case, but I don't have any recollection.

Q What is the Western Show?

A The Western Show is, to my understanding, another cable industry conference. This one is annual, and it's held in California, generally in early December, late November time frame.

Q Do you generally go?

A I don't generally go, but I have gone on a couple of occasions in the past several years.

Q Let me ask you now if you can recall anything that you discussed with Mr. Elsner and Mr. Schneider at that dinner in Los Angeles?

A No, I'm afraid I cannot.

Q Even looking at this, you draw a complete blank on that occasion?

A Looking at this alone, I still cannot remember the specifics of our discussion.

Q Can you remember anything about the discussion?

A Not as I sit here today.

Q And you say looking at this alone; can you think of any other document or anything else that might assist in refreshing your recollection?

A I'll have to think about that. I cannot think of anything as I sit here today.

Q Point number two on the second page under UIH says, "Told them about divided views on our board." Do you see that?

A Yes, I do.

Q As of December 1, 1993, were there divided views on your board with respect to a UIH investment in the Wharf Cable project?

A I'm afraid I cannot remember.

Q Look at the handwriting at the top of that page. That's Mr. Woo's handwriting; correct?

A That appears to be his handwriting.

Q Did you discuss any of these matters with Mr. Woo?

A I may have, but I cannot recall.

Q Let me ask you to turn to the last page, December 14, 1993, agenda for meeting with Chairman; do you see that?

A I do. WC-52463?

Q Correct.

Q And under planning, it says, "Partnership strategy, UIH, others." Do you see that?

A I see that.

Q Whose handwriting appears in that section?

A That appears to be my handwriting.

Q Now, next to business strategy, it says, "Revise." Correct?

A Yes.

Q And that's your handwriting?

A That appears to be my handwriting.

Q And next to partnership strategy, there's a circle around UIH?

A Yes.

Q And then it appears to say, "Stall." Correct?

A That appears to be the case.

Q What did you mean by that?

A I don't remember writing that, and I do not remember what I meant by it.

Q Do these handwritten comments by you reflect discussions you were having with Mr. Woo?

A Not necessarily, and I cannot remember whether they did.

Q What other explanation could there be for these handwritten comments?

A I don't remember what these handwritten comments were.

Q Did you have any discussion with Mr. Woo during December, 1993 or January, 1994 regarding stalling UIH?

A I cannot remember whether I did or not.

Q Do you have any explanation at all for that comment, "stall"?

A I cannot remember writing that comment.

Q You don't deny writing it, though?

A I am not denying, but I cannot confirm either.

Q Can you tell me when these handwritten notations were made?

A I do not remember making any handwritten notations. I cannot remember when they would have been made.

Q Would it be reasonable that they were made in connection with a discussion with the Chairman?

A Not necessarily, but I cannot remember.

Q You can't think of any other possible explanation?

A They may be notes for myself. They may be anything.

Q And why would you be writing a note to yourself saying "stall" about UIH?

A I would not remember.

Q Mr. Ng, let me hand you what's been marked as Deposition Exhibit 2121. It's a letter from Mark Schneider to Mr. Woo, with some handwritten notations on it. Do you recall this letter?

A Let me take a look.

(Pause.)

A Vaguely.

Q Will you look over on the second page of Mr. Schneider's letter? He has several bullet points, and goes over onto the next page. Let me ask you some questions about these bullet points.

First of all, do you agree with the first bullet point?

A I do not agree that UIH completely rewrote our business plan. Our business plan in its first form did not look like our business plan in its then current form, and I do not agree UIH completely rewrote our business plan.

Q What contribution did they make to the revision of your business plan?

A Limited contribution.

Q Can you describe what it is that they did?

A I cannot remember specifically what they did, but our business plan was substantially updated by our own resources.

Q And you believe, or your recollection is that UIH had a limited role in that?

A That is my recollection.

Q Who from UIH would have been providing services with respect to revising your business plan?

(Whereupon, an objection was made as to form.)

A At that time--well, first of all, after January 1, 1993, nobody. And in the last quarter of 1992, possibly a little bit of Bill Pittman, a little bit of Steve Moss. That's all I can think of. But their contribution would have been limited.

Q Why do you use January 1, 1993 as a cutoff point?

A That's just a convenient date. As I was testifying yesterday, starting from the beginning of 1993, there was little or no contribution from UIH.

Q Look at the second bullet point, please, on this Exhibit 2121. Do you agree with that bullet point?

A No.

Q What don't you agree with in that point?

A I don't believe UIH identified, negotiated and used their vendor associations to save Wharf Cable many millions of dollars.

Q Did they do anything with respect to their vendor associations for the benefit of Wharf?

A Did they do anything to their vendor associations?

Q Let me ask the question differently.

To your knowledge, did Wharf receive any benefit from UIH's associations with the vendors?

A I would say to the best of my knowledge, little or none.

Q Did UIH negotiate with any vendors on behalf of Wharf?

A I can recollect UIH participated in some of Wharf Cable's negotiations with the vendors, but I cannot recall whether UIH negotiated on our behalf.

Q Did you ever request of UIH that it use its influence with vendors on behalf of Wharf?

A I do not remember doing that.

Q Look down at the third bullet point where it says transformed your network design. Do you see that?

A I do.

Q Do you agree with that bullet point?

A No, I don't.

Q Did UIH make any contribution to your network design?

A Little or none.

Q Did they make any?

A If any, only marginal.

Q What was that?

A I cannot be specific.

Q Look down at the next point where it starts, "Changed your marketing plan." Do you see that?

A I see the point, "Changed your marketing plan," yes.

Q Do you agree with that bullet point?

A No, I don't.

Q Did UIH have any influence on your marketing plan as described in that bullet point?

(Whereupon, an objection was made as to form.)

A UIH, I seem to recall, did make some suggestions in relation to our marketing plan, but I would certainly not agree that they changed our marketing plan, or I would certainly not agree with the implication that our marketing plan would not have changed without UIH's suggestions.

Q What suggestions did UIH make with respect to your marketing plan?

A I'm reading this note here which talks about selling boxes and SmartCard in Corner Shops. I believe UIH held the view that that would not be the best way to run our business.

Q Do you agree with that?

A I agree that would not be the best way to run our business, but we arrived at that decision independent of UIH.

Q UIH's advice had no impact on your decision in that regard?

A Little or none.

Q Look at the next one that talks about, "Reviewed, designed and approved an MIS system." Do you see that?

A Yes, I do.

Q Which part do you agree with?

A I agree that UIH personnel assisted us to review, design and approve an SMS system, which incidentally I don't know whether it is virtually the same as their Czech Republic and Motor systems. I don't know that information. And they also assisted us to negotiate with the vendors.

Q Who from UIH provided that assistance?

A A gentleman known as Mr. Case; Mr. Paul Case was procured by UIH to offer that assistance.

Q Was Mr. Case helpful with respect to the SMS system?

A Mr. Case assisted the Wharf Cable team to negotiate those contracts at a rather late stage, and he did provide help.

Q Look at the next one, please, "Located, pre-screened, interviewed and sent to you for hire you Chief Operating Officer and key members of your engineering staff." Do you agree with that bullet point?

A No, I don't.

Q Did UIH have any contribution in the location, pre-screening, interviewing of Chief Operating Officers and members of the engineering staff?

A We'll probably need to talk about them position by position, because all of them were not the same.

Q Let me ask about the Chief Operating Officer. Did UIH have any role with respect to Mr. Keefe?

A Mr. Keefe's position at Wharf Cable was Cable Operations Director. To answer your question, Mr. Keefe was referred to Wharf Cable by a head hunting agency. I believe UIH did

conduct one or more interviews, interview or interviews, either by telephone or in person with Mr. Keefe.

Q And that was on behalf of Wharf that UIH did that?

A On behalf of Wharf Cable, in which UIH was interested in investing.

Q Okay. What role, if any, did UIH play with respect to the engineering staff?

A UIH played a slightly bigger role in relation to the engineering staff. UIH located our network manager and our network construction manager.

Q Who were they?

A Network manager was George Taylor.

Q And the network construction manager?

A He was Ernest Gregory.

Q Okay.

A And helped me to pre-screen and interview those two candidates.

Q What about Blake Williams, how did he come to be in the employ of Wharf?

A David Keefe hired Blake Williams. I do not remember how the two of them got into a discussion about Mr. Williams' possible joining of Wharf Cable. But I know the outcome was Mr. Williams took up an employment contract with Wharf Cable.

Q And he had been a UIH employee prior to that?

A I don't know whether he is--he was, rather, a UIH employee, but he was one of the UIH personnel.

Q Okay. Look at the last bullet point on that page, please, where it says, "Directly provided for a number of months your Acting Chief of Operations." Do you see that?

A Yes, I do.

Q "Plus four other people." Do you disagree with that bullet point?

A I disagree with that bullet point.

Q Did UIH provide for a number of months your acting chief of operations?

A At best, for three months, and only on a part-time basis.

Q That would have been Mr. Pittman, wouldn't it?

A That is correct.

Q And when you say only on a part-time basis, what do you mean by that?

A As far as I can recollect, Mr. Pittman was responsible for UIH's other projects in Asia as well. He travelled frequently, and even when he was in Hong Kong, I am not sure that he allocated 100 per cent of his time to the Hong Kong project.

Q Did Mr. Pittman ever fail to provide services requested of him by Wharf Cable?

A I have no specific recollection of his failure to provide service to Wharf Cable. But I also understood even at that time that he was going to be part-time. So my expectations would have been different.

Q What was your understanding of how much in terms of percentage he was dedicating to the Hong Kong project during the period of time from September, 1992 to the end of 1992?

A I do not remember.

Q Do you remember it being the majority of his time?

A I do not remember.

Q The last sentence says that, "Stephen offered two of these people jobs and took them permanently without consulting UIH." Do you see that?

A Yes, I do.

Q Now, prior to the time that you hired Mr. Moss and Mr. Williams, did you consult with UIH about hiring those people?

(Whereupon, an objection was made; no foundation.)

A I believe we consulted UIH before we hired Mr. Moss and Mr. Williams.

Q Who consulted with who?

A I cannot remember who consulted with whom.

Q Did you consult or did somebody else from Wharf do the consulting?

A It may have been me, but I cannot remember.

Q You just don't remember?

A I do not remember.

Q Are you sure there was a consultation?

A I'm not 100 per cent sure, but I believe we did.

Q And you don't remember who from UIH you would have consulted with or Wharf would have consulted with?

A No, I cannot remember.

Q Look over on the next page, the bullet point at the top of the page where it says, "Reviewed your programming negotiations and original programming investment plan. Few of our recommendations were accepted and, in our opinion, this is where you will have the greatest future problems." Do you see that?

A Yes, I do.

Q Do you agree with that bullet point?

A Only partly.

Q Which part do you agree with?

A I believe they did review our programming investment plan, and they may have reviewed some of our programming negotiations, but there were I believe specific cases where conflicts arose, I think where, therefore, they were not given access to our programming negotiations.

Q Did UIH make recommendations regarding programming?

A I have no reason to believe they did not, but I do not remember what those recommendations were.

Q Do you know if any of the recommendations were ever accepted?

A I do not remember.

Q Since launch, has Wharf had problems with its programming?

A I don't understand what you mean by problems.

Q Well, have you considered your programming line-up and made changes to try to attract more subscribers?

(Whereupon, an objection was made; no foundation.)

A We have changed channel line-up.

Q Has Mr. Woo, since launch, expressed dissatisfaction with your channel line-up and your programming?

A I believe he has expressed some comments about programming line-up.

Q And have you made changes in programming since launch?

A Yes, we have made changes in programming since launch.

Q Why?

A In response to market needs.

Q Can you describe for me what changes you've made?

A At launch, we had eight channels on air. Today, we have 20 channels on air. The entertainment channel was a channel included in the original eight channels at launch. That has subsequently been renamed the Drama Channel. The international channel has taken on more news content. And the preview channel has since been substituted. I should correct myself about what I testified slightly earlier. We have 20 channels on air in the MMDS network. In the fiber optic network, we actually have 29 channels on air.

Q Can you recall discussions that you had with Mr. Pittman in the summer or fall of 1992 regarding the recruitment of key management personnel?

A I can remember there were generally some discussions, but I cannot remember the specifics.

Q Do you remember--can you tell me what generally was discussed?

A What I can remember is we were talking about recruiting from the cable T.V. industry senior executives who had operating experience to come to joint Wharf Cable.

Q What role was UIH going to play in that recruitment effort?

A A supporting role.

Q Were they going to assist you in identifying, interviewing and screening some of these people?

A I believe UIH played a supporting role in sometimes identifying, sometimes interviewing possible candidates for the positions that we were looking to recruit.

Q Were you ever disappointed with the assistance being provided to you by UIH in that respect?

A Yes.

Q Why don't you describe that for me; when and what were the circumstances?

A Take the position of the Cable Operations Director.

Q What happened there?

A UIH initially referred a few candidates to me for my consideration. None of them turned out to be suitable for the position, and we eventually had to go to a head hunting firm to finally recruit David Keefe, and as a result of that, we lost several months of valuable time.

Q Well, according to your testimony, you had been trying to satisfy yourself on UIH's financial condition for several months prior to September, 1992; correct?

A That is correct.

Q And you were not satisfied as of September, 1992 with the information you had received; correct?

A I do not remember being satisfied.

Q Why were you continuing to negotiate with UIH at that time then?

(Whereupon, an objection was made; no foundation.)

A If we were not continuing to negotiate with UIH, the financial information would not be forthcoming. Unless the dialogue was kept open, there would be no financial information.

Q And in September, 1992, was it Wharf's intent to try to have a shareholder agreement with UIH either prior to the bid or shortly after the bid?

A I believe that was Wharf's intent in September, 1992.

Q And why did Wharf have that intent without having the adequate financial information from UIH?

(Whereupon, an objection was made; no foundation.)

A The intent itself was subject to a number of factors, including confirmation of UIH's financial standing, including consummation of an investment agreement, and so on and so forth.

Q In January, 1993, did you believe UIH had an expectation of being able to invest in your project?

A Yes, I believed in January, 1993, January 11, 1993, in particular, UIH had an expectation to invest in the Wharf Cable project, assuming an investment agreement can be consummated, and assuming they could prove their financial position, and assuming the respective boards approve of it, and so on and so forth.

Q Do you believe that they had that expectation throughout the first two quarters of 1993?

A I cannot understand, or rather, I do not know whether they would have that expectation. But if they did, I cannot understand why they did at that time subsequent to the meetings in January, 1993.

Q You mean after you met with Mr. Schneider and others in January, 1993, you think that UIH could no longer have an expectation of being an investor in the Wharf project?

A Possibly an expectation, but it would have to be a very heavily qualified expectation, because circumstances changed in December and January, December, '92, January, '93.

Q And so just so I understand, at the time of January 11, 1993, you believe they would have had an expectation. But after you had conversations with Mr. Schneider maybe a week or two later, you think that that expectation would have vanished?

(Whereupon, an objection was made; no foundation.)

A I believe the expectation should have been subject to additional qualifications, qualifications additional to those which should have applied at the end of 1992, and first two weeks of January, 1993.

Q Okay. In addition to the qualifications that you've told me that they should have had as of January 11, 1993, what additional qualifications should they have had by the end of January, 1993?

A They would have been told by the end of January, 1993, that this matter would not be reviewed by our board until station opening. That would be a qualification. Another qualification would be that we would need to find a new basis

for the investment to go forward. That would be another important additional qualification.

Q And you say they would have been told. By whom?

A By me.

Q Now, a few moments ago, you said an additional qualification that UIH would have to have if it had an expectation of investing in the Wharf project would be that it would have to be on a new basis. Do you remember that testimony?

A Yes, I do.

Q What was the old basis?

A In summary, the old basis was for three shareholders, namely Wharf, NYNEX and UIH, to jointly invest in Wharf Cable, directly or through what is known as the CNCL. But, of course, that basis became no longer valid, at least for the time being, when the NYNEX board decided in December, 1992 that it was not ready at that time to confirm its investment.

Q So in 1992, you weren't prepared to take anything to your board until NYNEX confirmed that it was in the deal; right?

A Unless NYNEX confirmed it was in the deal, I certainly was not in a position to represent to my board that NYNEX was a willing and able shareholder.

Q Did you have reason to believe in the fall of 1992 that if NYNEX confirmed it was in the deal, that the Wharf board would approve it?

(Whereupon, the pending question was read back.)

A I had no reason to believe that if NYNEX was able to confirm that it was in the deal, then the proposal if put to my board would not be approved. And obviously would need to include a negotiated investment agreement, among other things.

Q When you say among other things, what other things?

A Well, the proposal to my board would include a negotiated shareholders agreement. It would include a--it would include commercial and financial information relevant to the project, among other things. A board presentation will be given, and I would need to sit down and think about what needs to be included in that board presentation.

(Whereupon, the portion of the videotaped deposition of Stephen Ng played for the jury was concluded.)

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

February 16, 1998

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APPENDIX BH

Excerpt from Direct Examination of W. Hudon

March 4, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 3967-3993; Transcript 1841-1867)

Excerpt from Direct Examination of W. Hudon

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U.S. District Court for the District of Colorado

(Aplt. App. 3967-3993; Transcript 1841-1867)

basis. They really had decided they wanted to focus on Hong Kong and make Hong Kong successful first before growing and undertaking other projects.

Q (by Mr. Wilson) Do you recall whether or not Mr. Ng had any other comments about the proposal that you made to him in your earlier letter?

A I do not.

Q I want to jump over in time at this point and go to the 1992 period. What I'd like to do is go to the next document in your stack which is Exhibit 369. This is a document that was produced out of Wharf's files. What is this document?

A This is a document that I would have been the principal author of, I think, or at least, organized in conjunction with a trip to Asia to raise--or to approach various prospective investors on the Wharf project.

Q Do you recall whether there was a genesis for you putting this document together?

A I have to think a moment on the time line. This is August of '92. My recollection is that I received a call from Mark Schneider in late July saying that basically we've got a deal and we--

Mr. Tully: I hate to interrupt, Your Honor, but this is hearsay. I don't know where it's going, but it's hearsay in the sense that he--

Mr. Wilson: It goes to our state of mind, Your Honor.

The Court: It's overruled.

Q (by Mr. Wilson) Please continue, Mr. Hudon?

A I received a call from Mark in late July saying we've got a deal. We need to get going on the financing. So, please, get started.

Q And, what did you do in response to your telephone call with Mr. Schneider?

A Well, I basically organized this document and made plans to take a trip to Hong Kong.

Q I'm going to come back to Exhibit 369, but I want to shift to the next document in your pile which is Exhibit 343. This is a letter from Sonjia Norman of UIH to Mr. Stephen Ng and Mr. Emil Fung at Wharf Communications. It says, "Mr. Bill Hudon and Mr. Clive Ng will be arriving in Hong Kong on Wednesday, August 22, 1992 and would like to meet with you to further discuss the funding situation for UIH-Asia." Did you make such a trip?

A I did.

Q And, when was this trip approximately?

A In that time frame.

Q And, did you meet with Mr. Fung and Mr. Ng regarding funding for UIH-Asia?

A I did.

Q Do you recall where the meeting was?

A I believe it was at their offices.

Q Did you discuss Exhibit 369 with them at that meeting?

A I either gave them a copy at the meeting or had sent one prior to the meeting. But, we did discuss the document and its content and then talked further about what I was going to be doing in the local Hong Kong market and generally what my strategy was for raising financing.

Q What did you tell them about what you were going to be doing in the local Hong Kong market?

Mr. Tully: Objection, Your Honor. It's getting leading again.

The Court: Sustained.

Q (by Mr. Wilson) What, if anything, was discussed with Mr. Ng and Mr. Fung about the reason you were in Hong Kong?

Mr. Tully: Objection, Your Honor.

The Court: Overruled.

The Witness: Now, I'm confused. I believe the question is what did we talk about regarding what I was there for?

Q (by Mr. Wilson) What were you doing in Hong Kong? What was the specific reason you came to Hong Kong?

A I was there following up to the conversation I'd had with Mark with regard to getting started on financing for our investment in the Hong Kong cable project. So--

Q Did you have--I'm sorry.

A So, we talked about who I was going to see, generally what we were saying to them. I explained that this was primarily a discussion outline for me and this represented the basic content that I was going to talk to them about.

Q Did you provide them with a copy of Exhibit 369?

A I did.

Q And, did you go through the document with Mr. Ng and Mr. Fung?

A We did. I don't recall to what level of detail, but we went through what was involved there, yeah.

Q Would you turn over to a page about several pages in on Hong Kong. Did you discuss this page with Mr. Ng and Mr. Fung? I'm sorry. There's little numbers down in the lower corner. This one is WC-00440. It's says UIH-Asia Investment Company-Hong Kong. It should be about three pages from the end.

A Okay. Yes. Part of the purpose of the meeting and what I was particularly interested in discussing with them is those pieces of content in there that related to our relationship with Wharf or the Hong Kong market.

Q Why is that?

A Well, the reason for that is I was--Wharf was a large and very prominent company in Hong Kong and I was going to be talking to people who certainly knew Wharf, had relationships with Wharf, and could easily pick up the phone and verify anything that I was going to tell them about Wharf or the project. So, I wanted to make sure that we were all on the same page.

Q And, do you recall whether Mr. Fung or Mr. Ng had any reaction to the information you were presenting to them?

A I don't recall any reaction.

Q Did they tell you that there was no such option as referenced in this page of the exhibit?

Mr. Tully: Objection; leading, Your Honor.

The Court: Sustained.

Q (by Mr. Wilson) What, if anything, do you recall that they reacted on the subject of an option?

Mr. Tully: Asked and answered, Your Honor.

The Court: Overruled.

The Witness: I don't recall any comment on the option. I mean, this was pretty vital to why I was there trying to raise money.

Q (by Mr. Wilson) I'm going to move forward in time to the next document in the pile which is Exhibit 564. This is a--excuse me, let me identify this. This is a memo from yourself to Mr. William Ng and Mr. Clive Ng dated October 2, 1992. If you could just tell us what this document is?

A William Ng and Clive Ng were partners of UIH and Ui-Asia and I think that that--

Q Let me stop you for a minute. Are you using UIH and UIH-Asia interchangeably?

A Yes. I made no distinction between them.

Q Please continue?

A I was giving them an overview of my trip to Hong Kong and people that I had spoken to about the investment in Hong Kong cable.

Q Let's go back to your August trip for a minute. In addition to meeting with Wharf, did you meet with other people on that trip?

A In August?

Q Yes, sir?

A I have to think in terms of--I believe that that August trip, the time was primarily spent in Hong Kong. I may have spent a little bit of time in Singapore.

Q Okay. And, turning the page on Exhibit 564, the third page in, there's a reference to Hong Kong and then some names of entities or some other things; CEF New Asia Partners, JP Morgan Securities, Goldman-Sachs, and if you were to continue in the document, there are other entities listed. What's the significance of these references in this exhibit?

A They were groups that we had talked to and made a presentation about our interest in the Hong Kong project and introduced them to that opportunity and tried to qualify what

interest, if any, they would have in joining with us at some point.

Q And, at these meetings, do you recall whether Exhibit 369 was distributed?

A Yes, it would have been.

Q Including the page that has UIH-Asia has an option to invest in Hong Kong?

A All that material is bound together.

Q And, do you recall whether you met with Merrill Lynch during that trip?

A Yes, we did.

Q How was that meeting arranged?

A I believe that the day before we met which was the day--at the meeting referred to in the Sonjia Norman letter--

Q This is the meeting with Mr. Ng and Mr. Fung?

A Right. As we were discussing various groups that might have an interest in this, they mentioned to me that the following day Merrill Lynch was coming in to discuss the project with them and invited me to join them and attend.

Q Did you join them and attend?

A I did.

Q And, who was present at the meeting in addition to yourself and people from Merrill Lynch?

A My recollection is it was Stephen and Emil.

Q Mr. Ng and Mr. Fung?

A Right. I don't recall if Sam Woo was there or not at that time.

Q Sam Wong?

A Sam Wong, yeah.

Q And, at this meeting with Merrill Lynch the day after you met with Mr. Ng and Mr. Fung, what was discussed, if anything, about UIH-Asia's financing?

Mr. Tully: Objection; leading, Your Honor.

The Court: Overruled.

The Witness: Well, the primary thrust of the meeting was for Merrill Lynch to come in and meet with Wharf and discuss the Hong Kong project. And so, I handed out the memorandum we had prepared. I briefly discussed UIH and our background and what our objectives were in Asia and then the balance of the meeting was focused on Hong Kong and discussion with Stephen and Emil.

Q (by Mr. Wilson) When you handed out Exhibit 369, the UIH financing memo, was that in Mr. Ng's and Mr. Fung's presence or was it outside of their presence?

A No, it's as we were all sitting there.

Q And, when you handed out Exhibit 369 in Mr. Ng's and Mr. Fung's presence, did they have a reaction to you handing it out or did they not react to you handing it out?

A No reaction.

Q If they had had a reaction to the content of Exhibit 369, what would you have done?

Mr. Tully: Objection, Your Honor; calls for speculation.

The Court: Overruled.

The Witness: Well, I would have been surprised. The purpose of the meeting the prior day was to sort of clear what I was going to present to outsiders with them. So, I wanted them to be aware of that content, in general.

Q (by Mr. Wilson) Let's move forward in time again to October of 1992. Let me ask you if you returned to Hong Kong in that time frame?

A I did.

Q What was the purpose of that trip?

A On this trip, I accompanied Gene Schneider and Bill Elsner, and we visited the four principal areas where United was involved with projects and then ended up in--or I was going to look at the order of things here--ended up in Taiwan and returned home.

Q And, did you meet with anybody from Wharf during that trip? This is the October trip.

A Right. Yes, we did.

Q And, who did you meet with during the October trip?

A Well, we had a number of meetings. I was following up with some of the prospective investors that I had talked to in August. Bill and Gene were meeting with different groups in Hong Kong; business people, dignitaries, officials of the city in one way, people that were involved in the cable licensing process.

Q Let me stop you there. Why were Mr. Elsner and Mr. Schneider meeting with these dignitaries and officials and the like?

A Well, as partners of Wharf and the project.

Q But, what was the purpose of the meetings, as you understood them?

A To present UIH to the local groups, whoever they may have been; financial groups, municipal groups, whatever.

Q As of the October meetings in Hong Kong, did you have an understanding as to whether UIH had a right to invest in the Hong Kong project?

Mr. Tully: Objection; leading, Your Honor.

The Court: Sustained.

Q (by Mr. Wilson) What, if anything, did you understand about UIH's position in the Hong Kong project as of the time you were in Hong Kong in October of 1992?

Mr. Tully: Same objection.

The Court: Overruled.

The Witness: That we had a right to invest in the project.

Q (by Mr. Wilson) Was that a subject of conversation with Wharf?

Mr. Tully: At this point, Your Honor, I'd like to have a clarification of when. What time frame are we talking about?

Mr. Wilson: I'm sorry, in the October of 1992 trip. A fair clarification.

The Witness: I want to make sure I understand--

Mr. Wilson: Let me broaden the--I'll withdraw the question.

Q (by Mr. Wilson) Was this the subject of conversation with Wharf or in Wharf's presence?

Mr. Tully: Again, Your Honor, I'm going to have to object. Who was he talking with, where did the meeting take place--

Mr. Wilson: I'm going to--

The Court: Sustained.

Mr. Wilson: Well, we'll move to another document.

Q (by Mr. Wilson) This is Exhibit 643 which should be the next one in your file. This is a document that shows a lunch at the Mandarin Grill in Hong Kong--Mandarin Grill, Mandarin Oriental Hotel, reserved by Mr. E. Fung of Wharf and the date is October 22, 1992. It shows guests as yourself, Mr. Mike Fries of UIH, and then various officials from the Hong Kong Bank and Wardley Limited. Do you recall attending such a luncheon?

A I do.

Q What was the purpose of the luncheon as you understood it?

A This was an introduction that Emil Fung was making for us to the Wardley Group.

Q What is the Wardley Group?

A The Wardley is an investment banking group that also has funds available to them to invest in various types of projects. Emil was introducing us to the Wardley people, who Wharf had a long-standing relationship with, with regard to our efforts to raise money for the Hong Kong project.

Q Why were you out there trying to raise money for the Hong Kong project in October of 1992?

A Well, because we had an option to invest and we were trying to raise money for that.

Q Was what you just testified a subject that was discussed at this meeting?

A Yes.

Q Was Mr. Fung present?

A Yes.

Q How did he react?

A Well, he was the host. So, he was facilitating the meeting.

Q Did you also meet with--was this the only discussions that you had with Wardley and Hong Kong Bank on this meeting or were there other discussions?

A Could you rephrase that? I don't quite understand what you're asking me.

Q Did you have any meetings with Stephen Ng at this meeting or at this--during the October 1992 visit to Hong Kong?

A Yes. I mean, there were--I didn't have an exclusive meeting with Stephen at this particular time. I know that they were--he was meeting with Bill and Gene on various matters and then I participated in some groups where Stephen was involved at this time.

Q What were the groups in which Stephen was involved at this time?

A Oh, I think we--well, the one I remember best was we had a cruise on their boat and a dinner with people from UIH, as well as Wharf, and various individuals from the Hong Kong community.

Q And, this was arranged by Wharf?

A Yes.

Q Let's move on to another subject. If you'll look at the next document in your pile, it should be Exhibit 819. Do you have that?

A I do.

Q Let me get some water here for a second. Exhibit 819 is a letter to Mr. Fung from yourself, re: commercial bank contacts, and this is dated December 2, 1992. Do you see that?

A Yes, I do.

Q And, in the first paragraph, it says, "Since our visit to Hong Kong, I have had some meetings with various commercial banks." Is that a true statement?

A Yes, it is.

Q And, it says, "In general, I have been discussing the Hong Kong project and UI-Asia's activities. I've also discussed our collective plan to organize an Asian tour of bankers to see who might participate in this type of trip." In this memo, what are you referencing as "our collective plan to organize an Asian tour for bankers"?

A Well, during the October trip, Emil and I talked about having a group of bankers come over to Hong Kong. And, by that, I meant senior bankers from major cable lending banks that were participating in international projects. We agreed that it would be useful to have those type of bankers come over, spend some time, see the project. So that when we went out to do debt financing for the project, we would hopefully get a couple of them to participate. The thought here was that it would be a much more successful financing if we had major international banks with recognized stature in the cable lending area to participate in the credit along with local Chinese or Hong Kong banks. This was a pretty specialized transaction and some of the local banks, while they were large, were not overly sophisticated in cable lending and would take comfort from having experienced banks like this participate with them.

Q Well, why were you involved in this effort?

A Well, I spent a lot of time as a result of our projects around the world working with these banks. I was heavily focused on large, primarily North American banks, but also some European banks who were looking at telecommunications and cable products internationally. That was a fairly select group of banks.

Q Were these banks with whom you had prior connections or were they banks that were strangers to you?

A Well, these are all banks that I had some level of connection with over the years, and most of them, I had some involvement with during my time at UIH.

Q And so, why are you sending Mr. Fung Exhibit 819, this 12-2-92 letter?

A Well, because Emil had a background in commercial banking and also in cable lending. So, we were working cooperatively on putting together a debt financing for the project and coordinating with each other on bringing a bank group to Hong Kong.

Q All right. And, in this letter, you mention several banking institutions; Toronto Dominion, JP Morgan, Bank of Nova Scotia, Citibank, Chase-Manhattan, Credit Lianase--and, I'm probably going to butcher the pronunciation on this--but it's Bank Pareba.

A Right.

Q Were you having discussions with these lending institutions in the fall 1992 time frame?

A We were having discussions with all of them on a variety of things except perhaps for Toronto Dominion. Toronto Dominion was a bank that Mr. Fung had come from.

Q Why were you talking to these banks?

A Well, we were talking to them about their interest in lending in Asia and participating in a trip that I was organizing through Asia.

Q Was there a relationship between the trip that you wanted to organize and the Wharf Cable project?

A What we had discussed--when I say we, Emil and myself--was that I would take them through Asia and then we'd make our last stop in Hong Kong and present the project to them, what Wharf was doing, and give them an introduction to the type of debt financing that Wharf was thinking about at that point in time.

Q Let's jump forward in time again to May of 1993. Before we do that actually, did you continue to have discussions with bankers about this trip after your December 2, 1992 letter to Mr. Fung?

A Yes, but we decided--we were originally going to plan the trip sometime in February and we decided shortly after this point in time to delay it.

Q And, why was that?

A There was some uncertainties in the local marketplace that we felt needed to be resolved before we brought the bankers through, and I would guess that the principal one that I remember was the decision to get the license reaffirmed by the Bejiing government.

Q You're speaking of Wharf Cable's cable television license?

A That's correct.

Q Do you know if the cable television license was subsequently reaffirmed by the People's Republic of China government?

A Yes, it was. In fact, it was--that's what, in part, was the trigger for our timing and the subsequent trip. We waited until that reaffirmation occurred before we brought the bankers through.

Q I want to jump back just for a minute to Exhibit 643. This is the little agenda--or the luncheon that you had with Mr. Fung and the people from Wardley and Hong Kong Bank. Was there anybody from NYNEX at this meeting?

A Not that I recall.

Q Now, had you had contacts with NYNEX regarding anything prior to the 1992 time frame?

A I personally had had some contact with NYNEX out of White Plains, but not specifically with regard to the Hong Kong project.

Q Did NYNEX have anything to do, at all, with your efforts to bring the bankers' trip to Hong Kong?

A No.

Q You mentioned these discussion in White Plains. What do you recall of those discussions with the NYNEX folks?

A Well, NYNEX was a major participant in cable projects in Europe, principally in the UK. We had approached them regarding some of the things we were doing over there and what interest, if any, they might have in joining with us in some of these projects.

Q What was their response?

A Well, over a series of meetings covering several months --and, frankly, I don't recall just how long a period of time that was, but several meetings--we had the sense that they were very unsettled about what their commitment to cable was and what they were going to do, in general, in cable. In the case of the UK, they had very large capital commitments there and they seemed uncertain as to what they were going to do going forward; whether they were going to continue with those projects, whether they were going to sell them, whether they were going to look for partners. But, eventually, they told us that they were not interested in extending their involvement in Europe through our projects.

Q Let's move back forward again to the May 1993 time frame. Are you familiar with something called the NCTA?

A That's the National Cable Television Association.

Q Is there an NCTA convention or show or something like that?

A They have a national convention each year in that April / May time frame.

Q Did you attend the NCTA convention in 1993?

A I did.

Q And, where was that?

A San Francisco.

Q Did you meet with Mr. Fung during the NCTA convention in 1993?

A Yes.

Q And, let's go down to Exhibit 1167, your May 25, 1993 memo to Mr. Fung, copies to Mr. Ng, Mr. Elsner, and Mr. Fries from you, re: bank financing. This says, "I appreciate your update on debt financing for the Hong Kong cable project and look forward to meeting banking institutions with you at the NCTA convention." It skips down, "Over the next couple of days, I will talk to the following banks." And, you list several banks including JP Morgan, Chase, Chemical, Bank of Nova Scotia, Bank Pareba, Plineworth Benson, Bank of America, Security Pacific, NatWest, Long-Term Credit Bank of Japan--oops, sorry--ING Bank and then A-B-N-A-M-R-O Bank. That's these listings here. Why were you talking to all those banks?

A We were trying to get organized for this bankers' tour. So, Emil and I had agreed that we would meet with a select group of banks, try to qualify their potential interest in making loans in Asia and specifically Hong Kong, and then invite them over to Asia.

Q Well, when you talk about loans in Hong Kong, are you talking about loans to UIH, loans to Wharf, loans to some third party? What are you talking about?

Mr. Tully: Objection; leading, Your Honor.

The Court: Sustained.

Q (by Mr. Wilson) To whom were you talking to these bankers about making--or what was the purpose of you talking to these bankers about making loans in Hong Kong that you testified just a minute ago?

A We were talking to them about making loans for the Hong Kong cable project.

Q That's the Wharf Cable project?

A That's correct.

Q And, did you and Mr. Fung meet with bankers at the NCTA convention?

A We did.

Q Did you have conversations with the bankers either prior to meeting with Mr. Fung or while you were meeting with Mr. Fung about what UIH was doing there?

A Yes. If I recall, we gave the bankers some material regarding the project and UIH's involvement and so forth.

Q Do you recall what was told to the bankers about UIH's involvement in the project?

A That we had an option to buy 10 % minimum in the project.

Q Do you recall whether these conversations happened in Mr. Fung's presence or outside his presence?

A Both.

Q And, what was his reaction when you talked about UIH's option to invest?

A No reaction.

Q Did he tell you that there was no such option?

Mr. Tully: Objection, Your Honor.

The Court: Sustained.

Q (by Mr. Wilson) At any time, did you and Mr. Fung discuss the subject of conditions to UIH's option?

Mr. Tully: Objection.

The Court: Sustained.

Mr. Wilson: I'll move on.

Q (by Mr. Wilson) Let's look at Exhibit 1183 which is your June 3, 1993 memo to Mr. Fung. On the second page, there's a list of banks including Bank of America, Chase, Chemical Bank, A-B-V-N-A-M-R-O, Long-Term Credit Bank of Japan, and Pareba. Did you meet with these bankers at the NCTA convention?

A We did.

Q And, was Mr. Fung at these meetings?

A He was.

Q And, what was the subject of conversation at these meetings?

A The Hong Kong cable project.

Q Do you recall what was discussed?

A It--

Mr. Tully: I'm going to object, Your Honor. Who is at these meetings, when did these meetings take place, who is speaking; can we have some clarity?

The Court: Sustained.

Q (by Mr. Wilson) Well, let's talk generally about the meetings on Monday, June 7, 1993. Were these people in attendance from Bank of America and going on down?

A The people that are outlined here were in attendance. Emil and I would meet with each of them, generally provide an overview, discuss the project, give them an update as to where things stood with regard to licenses, operations, things of that sort, and answer any questions they might have. And then, if there was a further interest on the part of each of the banks, then we'd discuss with them our plans for a bankers' trip and when we might have that.

Q At the time of these meetings in May of 1993, what was your understanding, if anything, about UIH's involvement in the project?

A You would need to--aside from our option to invest, I would need to refresh my memory as to when we started putting people into the project.

Q All right. As of the time of these meetings in 1993, did you still understand that UIH had an option to invest?

A Yes.

Q And, if you had had a contrary understanding, do you have an opinion as to whether or not you would have been at these meetings?

Mr. Tully: Objection, Your Honor.

The Court: Overruled.

The Witness: We clearly wouldn't have been at the meetings. We were obviously explaining to these banks what our role was and our role was both as an investor and an operation--also, we're presenting an operations role, as well. That's why I was trying to recall exactly whether or not we had people on the ground involved in the project at that time. I think we did. I think we'd had them there for some time.

Q (by Mr. Wilson) Let's move on to another exhibit. This is Exhibit 1194 which is a series of letters from Mr. Fung to some people with a copy to you. The first letter is to a Mr. Gary Matus at Bank of America.

A Right.

Q And, we go on to a letter, a Mr. Yan Hanssen, Long-Term Credit Bank of Japan; a Mr. Thomas Reifenheiser at Chase Manhattan Bank, media and communications components; a David Burdge at Bank Pareba. The letters all essentially say the same thing. "It was a pleasure meeting you at the NCTA convention last week. Bill Hudon and I appreciate your taking the time to discuss the Wharf Cable project with us." Do you recall discussions of the Wharf Cable project at these meetings?

A Yes.

Q And, what was the relationship, if any, between these meetings and the August 1993 bankers' trip?

A Well, it was at these meetings that we extended an invitation to interested banks to come to Asia.

Q And, did bankers respond to the invitations that were extended?

A Some gave us an indication; others said that they would have to think about it. But, it was in the ensuing weeks that we put together the group and the itinerary.

Q All right. Let's turn to the next exhibit which is 1211. This is a letter from you to a Mr. Robert Vanshike of ING Bank in Holland, the Netherlands. You write to him, "I would like to invite you and"--I'll butcher this one, as well--" Duke Denbeston to join with United International Holdings and a small group of international media telecommunications bankers on a tour of our Asian multi - channel television projects. The purpose of this tour is to provide you with an overview of the rapidly emerging Asian market with a special focus on the financing requirements for the Wharf Cable Hong Kong project." And then, the letter goes on. When you're referring to our Asian projects, what were you referring to?

A Wharf and UIH.

Q And, I'm sorry, were there UIH telecommunications projects other than Hong Kong?

A Well, in--let me step back here. I stand corrected. In the sense it says "on a tour of our Asian multi-channel television projects", I'm talking about the UIH multi-channel television projects in those different markets; Taipei, Bangkok, and Hong Kong.

Q Taipei is in Taiwan?

A That's correct.

Q Bangkok is in Thailand.

A Bangkok is in Thailand, right.

Q And, Hong Kong?

A Right.

Q All right. If you look at the next page of the exhibit, there's an itinerary that runs from July 29 all the way down to August 7. Do you recall whether this was roughly the itinerary that was followed for the bankers' tour?

A I believe it was.

Q And, who ended up going on the bankers' tour?

A There were members from Chase-Manhattan, Bank Pareba, Chemical Bank, Bank of America, National Westminster, and the Long-Term Credit Bank of Japan.

Q And, what happened during the bankers' tour, generally?

A Well, the tour had two purposes. One was to give these bankers an overview of what was happening in Asia. Most of these bankers, although they were actively involved in cable lending, had not been actively involved in cable projects in Asia. Their banks had participated in other lending activities in Asia, but not necessarily cable. So, we wanted to give them an overview of what was going on there, give them a sense of how cable was emerging in the different parts of Asia. And then, secondly, we wanted to bring them to Hong Kong and

present to them a very specific opportunity which was the financing for the Wharf Cable project.

Q Did you have discussions with the bankers during this trip about the subject of UIH's involvement in the Hong Kong project?

A Yes.

Q What was discussed with the bankers?

A That we were involved in the project in several ways. That we had an option to invest. That we were providing personnel to the project in certain areas and that we were advising them on various activities such as programming and construction and things of that sort.

Q All right. I'm going to move to another exhibit. This is Exhibit 1241 which is an August 9, 1993 letter from you to Mr. Michael Pralle, P-R-A-L-L-E, of General Electric Credit. Now, we talked at the first of your examination about General Electric Credit. Now, what is that entity again?

A Well, General Electric Credit is the financing subsidiary of General Electric Corporation. They have been one of the major lenders to the cable television industry, and they had also been a lender to us in some of our European projects.

Q The second paragraph of the letter, you tell Mr. Pralle, "As you may know, UIHI has the option to invest with Wharf Cable to develop the Hong Kong cable system." You go on. Is this typical of what you were telling the investment community in the summer of 1993 time frame?

Mr. Tully: Objection, Your Honor.

The Court: Yes?

Mr. Tully: No foundation.

The Court: Overruled.

The Witness: Yes, that was my understanding.

Q (by Mr. Wilson) All right. Let me show you another document which is Exhibit 1227 which is a document called UIH, United International Holdings, overview of Asian projects. It talks about Hong Kong, Taiwan, and Thailand. Then, if you go into the--it's actually Page # 4 down in the

APPENDIX BI

Excerpt from Direct Examination of M. Fries

March 5, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 4229-4233; Transcript 2072-2076)

Excerpt from Direct Examination of M. Fries

March 5, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 4229-4233; Transcript 2072-2076)

A The same reason, that while it wasn't certain that they would be involved, there was an expectation that NYNEX would be involved, and again, we were happy to accommodate their involvement, so we drafted one document. I mean, it wouldn't have made sense to draft two. If they didn't become involved, then it would go back to a two-party document. That was the understanding.

Q All right. Now, did this draft or any following draft with three parties get signed?

A No.

Q Now, let me ask you to look at Exhibit 1150, and I'm fast forwarding you quite a ways in time.

A Okay.

Q Now, Exhibit 1150 appears to be that draft letter of intent we were looking at before, only it's all marked up, and it comes much later in the series of events. Let me show it to you, the front page of it. Do you have it there in front of you?

A Yeah, I have it in front of me.

Q All right. Tell us what 1150 is, please.

A This is a mark-up of the pervious letter of intent for the purpose of establishing a new agreement between Wharf and

ourselves subsequent to NYNEX's decision not to be part of the project.

Q All right. Now, if you'll look up in the upper right corner on the date, the proposed date, it indicates May, 1993. Do you see that?

A Yes.

Q All right. So roughly when, if you can recall, was this--was this mark-up done?

A Late April or early May, 1993.

Q 1993?

A That's my recollection, yeah.

Q And it indicates on it two parties--

A Correct.

Q --Wharf Communications Investment Limited and UIH?

A Correct.

Q And again, what happened to NYNEX?

A They had made a determination at around December, '92, January, '93, not to be part of the project.

Q Now, was this mark-up turned into a typed draft?

A Yes.

Q And were typed drafts with just the two parties then exchanged between you and Wharf?

A Yes.

Q For what period of time?

A Oh, from this period in 1993 all the way through late summer, early fall, 1993.

Q And did NYNEX appear as a party on any of those drafts?

A No.

Q Now, look, if you will please, at the classical handwriting on the left-hand side here. I'm going to ask you some questions about it. First of all, it says--well, why don't you tell me.

A In the box it says, "MTF," that would be myself, "to redraft." And then it goes on "CNCL formed UIH right to subscribe pursuant to agreement."

Q Let me stop you there.

A Okay.

Q I'm going to come back to this again later, but explain that. What does that mean, "CNCL formed UIH right to subscribe pursuant to agreement"?

A Pursuant to the agreement we reached in October of '92 with respect to our option and right to invest. This would--this would document that right.

Q And that's what you're referring to there in that note?

A Correct, correct.

Q All right. Go on.

A "Need to allow for third party "--

Q Okay.

A And then it goes on, --"selected by Wharf, but agreed to by UIH. Wharf no less than 60 per cent."

Q All right. Now, explain those comments. "Need to allow for third party, selected by Wharf, but agreed to by UIH. Wharf no less than 60 per cent." Can you explain that?

A Sure. Wharf had indicated that we should leave stock available for a third party, perhaps a telecommunications investor, if and when that third party was discovered or would indicate an interest, not knowing who that would be. And we certainly didn't have a problem with that for the same reason we didn't have a problem with NYNEX being an investor, and we agreed that they could identify that party, but they would have to be somebody we accepted. It couldn't be, you know, anybody. We didn't really have a problem that they would find somebody we wouldn't accept, but that was specified. And if that third investor came into the project, that Wharf would not go down below 60 per cent. So we would have 10, possibly more, and that third party would take the balance, but Wharf -- under no circumstances would Wharf go below 60.

Q Now, in following drafts of this memorandum of understanding, did you have comparable provisions relating to a new partner?

MR. MUNSON: Objection, Your Honor, leading. It suggests the answer.

THE COURT: Sustained.

Q (by Mr. Chase) Were there any comparable provisions in later drafts dealing with this subject?

A Yes.

Q And why was that?

A Because we agreed on it. We said, you know, we'll be partners, and if it makes sense at the appropriate time, we'll bring a third party in, and we'll make sure that our agreement accommodates that.

Q Now, let me ask you to flip back to 493. This is the mark-up draft -- well, actually, let me--let me stop you there. Why don't you flip to 383, which is the August 24, 1992, draft letter of intent.

A Okay.

Q I'm going to use 383 and 493 as kind of bracketing a period of time. 383 is August 24, '92. 493 is September 19, '92.

A Okay.

Q And do you understand that that's the period when you were working on these letters of intent drafts?

A Yes.

Q All right. Now, with respect to 383, which is the August 24th draft, let me put this under the screen again and ask you about another provision here. I want to make it big, but not so big that it blows off the screen.

All right. You see up at the top there? I'm going to read from something here.

A Okay.

Q It says, "This letter does not create legally binding and enforceable obligations and is intended to identify in

APPENDIX BJ

Excerpt from Direct Examination of M. Fries

March 5, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 4288; Transcript 2131)

Excerpt from Direct Examination of M. Fries

March 5, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 4288; Transcript 2131)

plaintiffs and the defendants have agreed about something, the fact that this is--

THE COURT: It's a small step, but a great one for mankind, right?

MR. CHASE: This document is October 6, 1992, and not November 30, 1994.

Q (by Mr. Chase) Okay. Now, back to you.

A Okay.

Q All right. Now, look over at the second page of the document, and I'm going to ask you about this particular portion where it says, "As for the terms of the MOU and shareholder's agreement, we have substantively reviewed all the super majority issues and seem to have come to terms on the latest draft." This is Mr. Fung writing, and then he goes on to say, "I suspect NYNEX was not really negotiating in earnest." Do you see that

A Yes, I do.

Q All right. Now, this is October 6, 1992. To the best of your recollection, as of the time of your memo here that we're talking about, which is in November, 1992, were there any outstanding issues on minority shareholder protections between the parties?

A No, I think the documents that were drafted at that point in time reflected things that we were willing to agree to. As I'm sure people have been informed, we're always

APPENDIX BK

Excerpt from Direct Examination of M. Fries

March 5, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 4223-4227; Transcript 2066-2070)

Excerpt from Direct Examination of M. Fries

March 5, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 4223-4227; Transcript 2066-2070)

please, at Exhibit 383. This is an August 24, 1992, letter from Tim Bellis, who we've established in this case is Wharf's lawyer, to various people, transmitting a draft letter of intent. And this is August 24, 1992. Do you have that?

A Yes, I do.

Q All right. I want to take a little time with this. Now, before the break, you were looking at a letter of intent or a draft letter of intent. Just so--just so I don't get my language mixed up here, were any of these drafts ever signed?

A No.

Q So everything we're talking about in terms of this period is a draft something?

A Correct.

Q All right. Now, this August--I was showing you before the break a September 19 draft letter of intent. Do you remember that?

A Yes.

Q Now, let me ask you to look at this August 24, 1992, letter--draft letter of intent and ask you whether that bears any relationship to the one I showed you before lunch?

A It was a previous draft, a prior draft.

Q All right. And between this one that I'm going to show you now, August 24th, and September 19th, were there various draft letters of intent?

A Yes.

Q All right. I'm not going to ask you to go through all of them, and a collective sigh of relief comes from the courtroom. And let me just ask you with respect to the transmittal letter here, first of all, on this August 24th draft.

Let's take this a piece at a time. On the transmittal, I take it you got a copy of this at or about this time?

A Yes.

Q All right. It says, "Wharf Cable. At the request of Emil Fung of Wharf Communications Investments, I enclose a draft letter of intent proposed to be entered into between Wharf Communication Investments, UIH and NYNEX in relation to the proposed investment in the company which will bid for the subscription television license in Hong Kong." Do you see that?

A Yes.

Q All right. Now, first let me ask this: How is it NYNEX is now involved in your relations with Wharf?

A As I mentioned earlier, they were at various stages involved, not involved, and Wharf had communicated to us that they had been having discussions with NYNEX. We weren't privy to those discussions or involved in those discussions, and as a matter of expedience or convenience, they asked that we just do one document, and we had no objection to that. We had no objection to NYNEX's participation.

Q All right. Now, you say as a matter of expedience or convenience. Whose?

A Really Wharf's.

Q Why?

A Well, it was hard to--there's no reason to do two documents, is really the answer.

Q Was it ever explained to you in any other terms?

A No.

Q Now, let's look at this draft letter of intent that you get in August, 1992. And now this one--this one shows three potential parties, right?

A Correct.

Q Wharf Communications, UIH and NYNEX; see that?

A That's correct, yeah.

Q And so to you--to the best of your recollection, is this the first such draft showing three parties?

MR. MUNSON: Objection, Your Honor, leading.

MR. CHASE: I'll ask it differently.

Q (by Mr. Chase) Were there any prior drafts showing three parties?

A Not that I recall, no.

Q All right. Let me ask you about certain language, and I'm going to walk through this a little bit. Do you see where it says " Corporate structure and shareholders "--

A Yes.

Q --under Point 1?

A Um-hum.

Q Okay. "Wharf Cable will be incorporated under the laws of Hong Kong, and its issued share capital will be held as to 70 per cent by Wharf, 20 per cent by NYNEX and 10 per cent by UIH." Do you see that?

A Yes.

Q Now, I'm going to ask you about the next sentence. "If by the time of the proposed signing of the shareholder's agreement the necessary approvals to NYNEX acquiring its 20 er cent interest have not been obtained, Wharf will acquire an initial interest of 90 per cent on the basis that it will mke 20 per cent available to NYNEX when such approvals have been obtained." Do you see that?

A Yes.

Q Can you explain why that language is there?

A Well, it was there--

MR. MUNSON: Objection, Your Honor, no foundation. The evidence is that this is a document that somebody else wrote.

THE COURT: Overruled.

THE WITNESS: At this point in time it was unclear whether NYNEX would get board approval and actually be involved in the project, so Wharf was being and we really were being accommodative of that and allowing for them to come in at a later date should they get approval, it being understood among all parties that they may not get approval.
So Wharf would hold on to their 20 per cent in the event that they did get approval.

Q (by Mr. Chase) And if they didn't?

A Then they wouldn't be an investor.

Q All right. Now, let me flip you forward to the draft letter of intent we were talking about before lunch, and that would have been--I think it was 493. Can you go back to that a second?

A Okay.

Q And does that--and there's a bunch of cross-outs in 493, and we're going to ask you about that later. But does that indicate that that same language that we just went through has remained in the draft?

A Yes.

Q All right. And to your knowledge, during the drafting period, from August 26th through this letter, this draft of September 19th, did that ever change?

A No.

Q Now, I'm going to stay with NYNEX here as a topic, and so I'm not going to go chronologically with you through the

events of this case. We're going to come back and pick up some other things, but I'm going to forward you a little bit

APPENDIX BL

Excerpt from Direct Examination of M. Fries

March 5, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 4316-4320; Transcript 2159-2163)

Excerpt from Direct Examination of M. Fries

March 5, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 4316-4320; Transcript 2159-2163)

take a quick break.

(3:55 p. m. - Jury excused.)

(3:57 p. m. - Recess accordingly.)

THE COURT: Okay, I don't know how long we'll be.

(At 4:15 p. m. on March 5, 1997, with counsel for the parties present, and with the jury present, the following proceedings were had:)

THE COURT: Okay, Mr. Chase.

DIRECT EXAMINATION BY MR. CHASE RESUMES:

Q Mr. Fries, let me ask you to look at the Exhibit 1152, it's an April 30, 1993, letter from you to Mr. Fung.

A Okay.

Q Do you have that?

A Yes.

Q All right, now this letter to Mr. Fung goes back into the discussion of ownership, and it's been used in various ways in this case. I'm going to ask you about this paragraph: "Ownership: We left the issue of UIH's ownership in Stephen's hands. He was to bring this up at the next--at the

next Wharf board meeting. Since we have not heard from you on this, we have changed UIH's ownership right to include up to 20 percent. Has there been any further discussion of the matter?" Do you see that?

A Yes.

Q Now, when you say, "We left the issue of ownership--of UIH's ownership in Stephen's hands," what were you leaving in Stephen's hands?

A Well, like I've been saying from the very beginning, the idea of going up from 10 percent to a larger stake, which is why it says that since we haven't heard back from you on that issue, we just put the larger stake in this draft up to 20 percent. So clearly what I'm talking about here is the issue of increasing our ownership stake from 10 percent to something larger than that.

Q All right, and it talks about Wharf's board meeting. Do you see that in there?

A Yes.

Q And what did you understand would be the role of the Wharf board, if any, with respect to UIH's ownership right at this time?

A Well, when we requested a larger stake, he said that's a change and we've got to talk to the board about that, so we always viewed that our--that requested change on our part would require Wharf's board.

Q All right, now I'm going to--I'm going to take you through the process of the memorandum of understanding--

A Okay.

Q -- at this point, and we're not going to talk about every one of them. I'm just going to try to set a framework. If you'll look at--and it's an exhibit we already looked at, it's 1150, and that would be this markup of the letter of intent.

A Yes.

Q Do you see that?

A Yes, I do.

Q All right, and that's -- I've put up -- I've put this up on the board. And we've talked about CNCL form of UIH right to subscribe pursuant to agreement, right?

A Right.

Q All right, we don't have to go back into that except to ask again what agreement were you referring to?

A That's a note to myself. It says "MTF," myself, "to redraft," and I'm making a note to myself that that section should reflect our option or right to invest in the project along the lines that we discussed and agreed--

Q All right, now--

A --in October.

Q Okay, good. Now flip over to the next page, please.

A Okay.

Q And there's a handwritten note there, your handwriting I assume?

A Which one?

Q Where it says -- do you see what I've got up on the--

A Yep.

Q. --screen, "Into paragraph -- or intro paragraph"?

A Correct.

Q Could you say -- could you tell us what that is and what it means?

A That's referencing the need to incorporate a paragraph here dealing with the possibility of there being a third investor aside from Wharf and ourselves in the project. And I'm sure you'll show later a draft to see how that actually ended up being put in.

Q All right. Now that you mention it, I will. Just before I do, though, could you tell us what this paragraph, these handwritten notes mean?

A That is referencing the need to amend the document to reflect the fact that there's two shareholders and how decisions are made among those shareholders since there's only two.

Q And is that the governance issue that--

A Correct.

Q --you talked about?

A That's right.

Q Okay. Now let me fast forward you a little bit here. I'm going to show you another draft of the memorandum of understanding. Look, please, if you will, at Exhibit 1213.

A Okay.

Q Now, Exhibit 1213 is a July 15, 1993, memorandum from Mr. Fung to Mr. Ng transmitting a draft of the MOU with United International Holdings ; do you see that?

A Yes, I do.

Q All right, now I'm going to use this for a moment just to set a timing framework and then I'm going to come back to it for other purposes. This is dated July 15, and it says, from Mr. Fung to Mr. Ng, "Please find attached the latest draft of the MOU proposed by UIH. This most recent proposal represents UIH's adopted position following several rounds of negotiations with myself." Do you see that?

A Yes.

Q Now, was it accurate for him to represent to his boss that he had been in several rounds of negotiation on this memorandum of understanding?

A Sure. Yes.

Q And that would have been negotiation with you?

A Correct.

Q And did you believe at the time you were doing that that you were in a good faith negotiation?

A Absolutely, yes.

Q Okay. Now let me put this aside for a minute and ask you to turn to--I'm going to take you to some of your notes here. I'm going to show you some handwritten notes of yours from June 10th, 1993. And these are Exhibit 1192. I don't think they're in there, sir.

A No. Okay.

APPENDIX BM

Excerpt from Direct Examination of M. Fries

March 5, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 4169-4177; Transcript 2012-2020)

Excerpt from Direct Examination of M. Fries

March 5, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 4169-4177; Transcript 2012-2020)

Q Okay, you can go back where you came from.

Now let me take you back to Hong Kong for a minute.

In your dealings with the Hong Kong matter, who at Wharf did you deal with?

A Principally Stephen Ng and Emil Fung.

Q And you had personal contact with both of those individuals?

A Yeah, on many occasions.

Q Did you have several meetings in Hong Kong and in Denver and in other places?

A Yes.

Q And was it both with Mr. Fung and Mr. Ng?

A One or both at various times, yes.

Q For convenience in this trial to avoid confusion, we're referring to Mr. Ng as Mr. Ng (pronouncing).

A Okay.

Q So that we don't confuse him with Mr. Fung.

A Okay.

Q So you do whatever is comfortable for you, but I'm just pointing that out.

Let me take you back to 1991. In 1991, were you involved in discussions with Mr. Ng about getting involved--UIH getting involved in Hong Kong?

A Yes.

Q Can you tell us generally what you recall from those discussions?

A Well, we had a first meeting in Hong Kong, I think it was in the April, '91 time frame, during which we introduced ourselves and learned from Stephen Ng a little bit about the project. I don't think Mr. Fung was working for them at that point in time. We had several followup meetings with members of the Wharf team at that point in time through the spring and summer, and then we had a meeting, the last meeting was probably in November in Denver.

Q Okay. And what kind of things were you talking about in these various meetings?

A Principally we were trying to learn more about the project. It was in the very early stages at that point in time. We were describing our business, our company, what our objectives are with respect to investments and operating. We looked at versions of business plans that were obviously very preliminary, but descriptions of the business as they saw it at that point in time, reviewed and evaluated those business plans, communicated our observations and issues, talked about the manner in which we do business typically and how we get involved with companies like Wharf who are seeking to win a

license in a competitive process, and what our expected role would be and how we'd go about trying to finalize that role.

Q Did you discuss with Mr. Ng whether UIH provides consulting services?

MR. MUNSON: Objection, Your Honor ; leading.

THE COURT: Sustained.

Q (by Mr. Chase) Did you discuss the subject of consulting?

A No.

Q Was he looking for a consultant?

A No.

Q Did you tell him what UIH's expectations would be if it were to become involved?

MR. MUNSON: Objection, Your Honor ; leading.

THE COURT: Sustained.

Q (by Mr. Chase) Did you talk about UIH's expectations?

MR. MUNSON: Same objection.

THE COURT: No, overruled.

THE WITNESS: Sure.

Q (by Mr. Chase) What did you say?

A We communicated that UIH is not a consultant, obviously.

We're a company that traces its roots back to United Cable Television, which was one of the largest operators of cable systems in the states for 40 years, that we were principally in the same business as United Cable was in in foreign countries, where we would make investments, provide operational expertise, be very active in the operations of the business as a strategic partner or an investor.

Q You used the term strategic partner just now.

A Right.

Q Does that have a meaning in your industry?

A Sure.

MR. MUNSON: Objection, Your Honor, there's no foundation.

THE COURT: Overruled.

THE WITNESS: Sure. I mean, breaking it apart, strategic means someone who provides expertise of a strategic nature as opposed to, for example, a purely financial nature, and a partner is someone who is involved in the business on a financial basis, is taking risks together with that company.

Q (by Mr. Chase) What do you mean involved in a financial basis?

A An investor typically.

Q Now, in these 1991 discussions, did Mr. Ng express to you or express to someone in your presence what Wharf was looking for?

MR. MUNSON: Objection; leading.

THE COURT: Overruled.

THE WITNESS: Yes. They were cognizant of the fact that this would be a competitive bid process whereby potentially many firms would be submitting applications to the Hong Kong government for licenses, and they felt that they needed and were looking for companies who could provide expertise to the project, typically in principle to help accelerate the growth of the project and the implementation of the project, one of which would be from the cable T. V. industry.

Q (by Mr. Chase) Did you have discussions regarding UIH's financial capability?

MR. MUNSON: Objection, Your Honor ; leading.

THE COURT: Overruled.

THE WITNESS: Well, we, in the process of describing our company, we clearly indicated the types of investments we make, our financial wherewithal at the time, how we had gone about financing our investments up to this point in time, the sort of financial partners we brought into our organization. I think we made that pretty clear, yes.

Q (by Mr. Chase) All right. Let me ask you to look at an exhibit, and it may or may not be in the witness book. I don't think it is in the witness book, so I'm going to give it to you. I know it's not in the jury book. It's Exhibit 150. Do you have 150 in front of you?

A Yes, I do.

Q Is this your handwriting?

A I'm afraid so.

Q All right. Can we get the U. S. Marshal down here for criminal handwriting?

THE COURT: It's amazing that you didn't go to medical school.

THE WITNESS: My signature is pretty bad, too.

Q (by Mr. Chase) Mr. Fries, do you see where it says -- where I've highlighted? And these notes are dated, you tell me, it looks like October 24, 1991.

A Correct.

Q And do you know what this relates to?

A To the best of my recollection, this was a meeting that we were having in Hong Kong with Frank Webb, I believe.

Q All right. Now, who is Frank Webb?

A He was a consultant to the Wharf cable project.

Q Was the subject of an exclusive option raised in your discussions with Wharf people?

A Well, yeah, at that point in time, we made it clear to Wharf generally that it was important to us to be involved--if we were going to be involved in the project, we wanted to be

involved on an exclusive basis, that we didn't want to be involved in a beauty contest, that if we were going to start to provide expertise and advice and support, that we do so exclusively, to the exclusion of other cable T.V. type companies, and that at the same time, for providing that, we would want some kind of right to invest, or option to invest as the process evolved.

Q So did you propose that, or did somebody propose that at roughly this time?

A Yeah, I believe we discussed it during this meeting.

Q Did Wharf agree to give you an exclusive?

A No, at this point in time, they made it clear that they had not decided who they were going to work with exclusively or at all, and that they would be willing to work with us on a non-exclusive basis for the purpose or, you know, as they moved down the road to deciding who they would work with. So, they were clearly not interested in an exclusive relationship at this point in time, October '91.

Q Did they offer you an option at that point in time?

A No.

Q Did they tell you the concept was absolutely out of the question?

MR. MUNSON: Objection, Your Honor. This is quite--

THE COURT: That is suggestive. The objection is sustained.

Q (by Mr. Chase) What did they say, if you can recall, about an option?

A I'm not certain that we--well, I know that's what the note said. I know the principal objective was to make sure we were involved exclusively. That was their principal problem. I don't remember them saying no option, yes option, or that really being the issue at this early stage. It was really working with us exclusively.

Q Okay. Let me ask you to look at Exhibit 183 and that is in those notebooks that are next to you.

A Okay. Okay. I have it.

Q Do you have 183 there?

A Yes.

Q That appears to be UIH board meeting presentation of December 18, 1991.

A That's correct.

Q And, if you'll look over on the second page of the document under Hong Kong, it says, "UIH has proposed a management consulting relationship with an option to buy 10 to 20% interest." Do you see that?

A Yes.

Q Let me zoom it in here for a minute. There we go.

A Can I just look at this from now on or should I look at the book, too? Does it matter?

Q You can do whichever you want. We're using the monitors primarily so everybody, but you can see what's going on.

A I got you.

Q But, you have two options, if you will.

A Okay.

Q Now, it says, "UIH has proposed a management consulting relationship with an option to buy 10 to 20% interest." Do you know if the parties came to terms on that proposal in the 1991 time period?

A No, we did not.

Q Was there any discussion about Wharf's reaction to the concept of an option?

MR. MUNSON: Objection, Your Honor; leading and suggestive.

THE COURT: Sustained.

Q (by Mr. Chase) Was there any discussion about having an option with Wharf?

A Well, we made it clear that if we were going to be involved in the project--and keep in mind that the project at this point in time was developing towards the goal of submitting a bid and putting together the pieces that would be in their view part and parcel of a winning bid. And, we said if we were to be involved in that process, we would need a right to invest. And, that's what we described to them very clearly.

Q Why would you need a right?

A Because we are not consultants. We don't sell our services. We are investors. A lot of the expertise that we would provide, we would be providing in several forms; in the form of contributing our name and our credibility to the bid document, as well as in the form of providing expertise and advice and support through the process of developing the business and the operations.

Q Was that explained to Mr. Ng?

A Sure, yeah.

Q Now, have you ever heard of a company called NYNEX?

A Yes.

APPENDIX BN

Excerpt from Deposition Examination of E. Fung

March 5, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 4158-4161; Transcript 2001-2004)

Excerpt from Deposition Examination of E. Fung

March 5, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 4158-4161; Transcript 2001-2004)

1992 transmittal from Mr. Bellas to you transmitting a draft letter of intent among Wharf Communications, UIH and NYNEX Network Systems, and ask if you recall that document?

A Yes, I do.

Q Tell me, please, the circumstances that led up to the parties discussing a letter of intent.

A Well, we had switched from a shareholder's agreement with UIH to a letter of intent as perhaps the document that we would show in the--how would I say in the--

Q In the bid?

A In the bid; right.

Q And why was that?

A Well, one, because the shareholder's agreement, we wanted symmetry and we couldn't provide for it, and we were saying we were going down the path of whether we could have a letter of intent that would be signed.

Q Why did you need a letter of intent at all? Why couldn't you just go to a technical cooperation agreement?

A Well, we were coming off the shareholder's agreement and we were looking at whether we would insert both a technical

cooperation agreement and a letter of intent as part of the supporting materials.

Q Tell me as best you can recall how the parties went from the letter of intent concept to the technical cooperation agreement concept that was eventually adopted for the bid?

A It was under direction really from me that, you know, if this wasn't going to work for everybody, then let's just hit the TCA agreement, and this was something that Stephen had instructed me to do as well.

Q And would that have come roughly about September 19th, right about the time of this letter of intent?

A Yes.

Q Did you voice this in a meeting among the various participants?

A I did.

Q As best you can recall, tell me who was there and what you said.

A The same people that were there before, and I just had said that, you know, it's our view that the cleanest way to present our case to the government was as technical cooperation partners, and it would raise less issues than if we had a non-binding agreement and people would question the validity of a non-binding agreement, which could be more damaging than if we just had it as a technical cooperation agreement where the parties were considering making an investment in Wharf Cable.

Q So the paramount concern was how to package this thing for the bid?

A Correct.

Q I see. So once again we're talking about a packaging issue; correct?

A Yes, the entire document is for that purpose, for the packaging purpose.

Q For packaging?

A Yes.

Q Was there ever any intent that this technical cooperation agreement actually be an operative agreement among the parties?

A I think that, you know, we had talked about the fact that we had written in here was legitimate in terms of the services that could be provided and that if at certain time that we had wanted to call on these, that we would at least have the basis of a working document that could be used.

Q But was it the intent of the parties in September, 1992 that the technical cooperation agreement become at some point an operative document?

A I don't think there was a strong intent, no.

Q Do you think there was any intent?

A I can't be certain.

Q Pardon me?

A I can't be certain.

Q Did Wharf have any intent that this ever become the basis of a relationship between UIH and Wharf?

A Between UIH and Wharf?

Q Right.

A At that time, no.

Q Do you know if UIH ever intended that the technical cooperation agreement ever be an operative document?

A I would say no.

Q And the entire purpose of the document, as you understand it, was packaging for the purpose of the bid?

A Yes."

THE COURT: Mr. Chase, can we take our recess now?

MR. CHASE: Yeah.

THE COURT: Okay, about 15 minutes, please.

(10:18 a.m - Recess accordingly.)

(At 10:40 a.m. on March 5, 1997, with counsel for the parties present, the following proceedings were had:)

(Jury present.)

THE COURT: Fire away.

MR. CHASE: Are you ready, Mr. Boland?

MR. BOLAND: Yes, sir.

(Whereupon, the reading of the deposition of Mr. Emil Fung resumes.)

Q "Let me hand you what's been marked as Deposition Exhibit 2055. This appears to be an Ernest and Young document relating to Wharf Cable."

Now, before I put this on the screen, Your Honor, I'll point out to the Court the defendants object to the admissibility of this exhibit, and I'm going to read a few

APPENDIX BO

Excerpt from Direct Examination of M. Fries

March 5, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 4240-4283; Transcript 2083-2126)

Excerpt from Direct Examination of M. Fries

March 5, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 4240-4283; Transcript 2083-2126)

we didn't fund, our ownership stake would be diluted in accordance with the amounts that were funded for that telecom project.

Q So as far as you're aware, as of this mid-September time period, was UIH in disagreement on any substantive points?

A No. To the best of my recollection, no.

Q Now, look at Exhibit 493. This is the draft letter of intent of September, 19, 1992, that we keep going back and forth from.

A Right.

Q Now, I'm going to let you have a chance to show off your skill of reading your own handwriting, but I'm going to put a visual aid up. Can you see that from back there?

A Yeah, I can see what you're referring to there, yeah.

Q All right. Now, this is a portion of that Exhibit 493, and it's got we call a pull-out, and it's--it says "Option will need to be if we are not on license application." And that is next to some underlined language in the--in the draft. Do you see that?

A Yes.

Q All right. Let me take this a step at a time. The language that's underlined that this is next to says, "This letter does not

create legally binding and enforceable obligation." Do you see that?

A Yes.

Q And now we're talking September 19, 1992?

A That's correct.

Q You underlined that language, and then you wrote the language that you wrote, "Option will need to be if we are not on license application."

A I see that, yeah.

Q Would you please explain that to us?

A Sure. At this point in time, for a number of reasons it became clear that we were not going to get all the documents finalized prior to the license application being submitted. It was important to us, paramount to us that if we were going to be part of the license agreement, continue to submit and be part of the consortium that's looking for the license, that we would need to have a clear right to invest, since the agreements that we had been working on so diligently through August and September were not getting done for a variety of reasons.

At that point in time, Wharf was trying to come up with a different filing strategy, and I can explain this, if you'd like, but--

Q Go ahead, explain the filing strategy.

A Their filing strategy was since we didn't have all the documents packaged with a bow around them to present to the government and NYNEX wasn't sure if they were in or out,

that we would sign a consulting agreement, or the TCA as it's been referred to

Q All right.

A And that's why there's a change in the corporate structure and shareholding section, which as you can see, I've crossed out and put that "CNCL will be incorporated under the laws of Hong Kong and will be owned 100 per cent by Wharf."

Q All right. Let me stop you there because we're going to go through that--

A All right.

Q --in detail. But first I want to stay with this language. Option will need to be if we are not on license application."

A Right.

Q Why an option?

A Because we--you mean as opposed to what?

Q As opposed to anything else.

A Because we had been talking all along about being given a period of time to finalize our investment, actually make the--finish the investment in terms of funding it, and that option would have provided for that right.

Q All right. Now, before we go to the next subject that you started to get into here, and that was the filing strategy--

A Right.

Q --what I'd like you to do is look over at Exhibit 500.

A Okay.

Q Now, 500--500 appears to be handwritten notes of yours from September 20, 1992; is that correct?

A That's correct.

Q All right. And there's some language down here that I'd like you to explain to us--

A Okay.

Q --the highlighted stuff and anything else that you think is important for us to understand this. On the left it says, "MOU," something, "legally binding." And on the right it says, "Short list, option/binding? Filing strategy." Could you explain that to us, please?

A Right. As I said before, throughout August and September, we were working towards getting everything signed up and completed without any question marks, and for a variety of reasons, the timing of the bid--you know, NYNEX's uncertainty, the filing strategy--and what I mean when I say filing strategy, I mean what we actually say to the government had been changing.

And at this point in time what was being presented to us was a new filing strategy, and the new filing strategy would not involve signing any of the sort of agreements we had spent weeks negotiating up until that point in time.

And what we were focused on trying to do was make sure that our investment rights, which were characterized and incorporated in all of those documents, were preserved in the

event that the filing strategy was going to change and we weren't going to have those things signed up.

So the words "legally binding " refers to the fact that we need a legally binding right here. The words "option binding filing strategy, " what those relate to is that if the filing strategy is going to change, we need a binding option to invest in this business.

Q All right. Now, this is September 20, 1992?

A Correct.

Q Are you familiar with a document called The Technical Cooperation Agreement?

A Yes.

Q The date of that is September 25, 1992. Are you aware of that?

A Yes.

Q Now, in your own words, without any prompting, I'm going to go back and show you some documents after you describe it for us. Please tell us how you went from this three-party draft letter of intent to signing a technical cooperation agreement in September 25, 1992.

A Okay. We had been working on the documents up until that point in time. Wharf was concerned about not having the documents tidied up and packaged and had proposed that we sign a consulting agreement. The purpose of the TCA was to demonstrate to the Hong Kong Government that they had the strategic support and expertise to accomplish the project, but it was always in our mind clear that the TCA would be something

for the bid and not something that's reflective of our agreements.

Q Why is that?

A Because we would have never signed a consulting agreement, and we would have never been just a consultant. The TCA was not going to be effective unless we were actually shareholders.

Q Tell me what you can recall before I even show you your notes about what discussions you had during this period of time about this subject, and who did you have them with?

A Well, to the best of my recollection, the first time it came up was in a meeting with Emil Fung, and there may have been people from NYNEX who I don't recall, where he described the "new filing strategy." And he drew a little chart and described the fact that we would go in the bid as technical consultants, that we would have a clear right to invest, that that right to invest would be identified in the bid document.

And that gave us some concern, which is why we started talking about the need for an option because we had been working up to this point with the clear expectation of a right to invest, and we weren't willing to put our name in the bid and be part of the consortium, help them win the bid in essence, unless we had that clear right. I mean, that was what we had to offer, and we weren't about to hand it over just because the documents didn't get finalized. We needed something clear from them, some understanding that our investment right would be preserved.

Q Was there a discussion about whether that would be mentioned in the bid application itself?

MR. MUNSON: Objection, Your Honor, it's leading and suggesting the answer to the question.

THE COURT: Sustained.

Q (by Mr. Chase) Was there any discussion about how this would be documented?

A Yeah, there would be--the TCA--we would make sure that the TCA didn't in any way invalidate understandings we had outside of that. That's number one. Number two, the bid document was to be drafted in a way that gave us comfort that our option to invest was identified to the government and that--and that would give us comfort. We could make a statement to the government to that effect, we were comfortable with that.

And I had a separate understanding from Emil Fung, and I'm sure you'll get into this, that we would be promised an option, that if we went along with this filing strategy after all the work we had done, that our right to invest would be secure and that we would be--that the option would be delivered to us shortly after the filing.

Q All right. Now, I'm going to ask you to look at Exhibit 501, please.

A Okay.

Q Exhibit 501 consists of two pages. Let me ask you first, do you know if these two pages necessarily go together? Do you remember them going together?

A Yeah, I mean, I think they do. They certainly would appear to.

Q All right. Now, that is your handwriting on Exhibit 501?

A That's correct.

Q Let me ask you to look at the second page of Exhibit 501.

A That's correct.

Q Let me ask you to look at the second page of Exhibit 501.

A Okay.

Q And I'm going to show you a hand-drawn diagram at the top of the page. Is that your handwriting?

A No.

Q Whose handwriting is it?

A I believe that's Emil Fung, or Mr. Fung's handwriting.

Q Now, you say you believe. Why do you believe that?

A Well, when I was originally deposed, I wasn't certain, but since then I've looked at a number of documents that I've had the opportunity to look at with his handwriting, and I've also thought long and hard about this meeting and remembered discussing this with him, asking him about this filing strategy and asking him to lay it out for me. And together with my recollection and comparing his handwriting, it's clear that that's his.

Q All right. Now, what I'm going to ask you to do is we've got a visual aid here. Come on back, please. Why don't you position yourself to the microphone for a second. I have a--it's

your choice. You can have an electronic or a mechanical pointer.

A Okay.

Q Pick your pointer.

A Whatever you suggest. I'm not sure which--am I going to be pointing it at something?

Q Yes.

A Okay.

Q Go back to the microphone.

A All right.

Q If you decide to change, you can.

Now, this is Exhibit 1634, and it's a blow-up of that page of your notes.

A Correct. That's correct.

Q Now, you testified that Mr. Fung drew this chart--

A That's correct.

Q --in your presence?

A That's correct.

Q All right. I'll tell you what, can we have that super human highlighter? All right.

A How does this work?

Q Well, I'm going to ask you to--

A Oh, okay, I've got it. Got it.

Q I'm going to ask you to take it from the top here and explain to us, and I'm just going to for the moment ask you about this much up--

A Okay.

Q --what we've got here, starting with disclosure.

A Okay. The word disclosure relates to how we would disclose our arrangement here to the government in the filing--in the filing for the application. What we--what I had said earlier on the stand was that the shareholder agreement that we had anticipated signing prior to the bid document going in wasn't going to get done, and that made us nervous and concerned. So it states here, "Shareholder agreement signed October 15 or after license." The license bid went in on September 30th.

So the structure he drew here, CNCL was the company into which we have always been talking about investing, and he shows our investment, 10 per cent, and he shows NYNEX's investment at 20 per cent. And then there's a line that's drawn from us directly to Wharf Cable. Wharf Cable is the company that's seeking the license. That's the company that actually will be issued the license from the government.

And there's a statement here that says "Technical Cooperation Agreement." So what he's describing is for the purpose of the bid, we'll enter into technical cooperation

agreements directly with the company that's applying for the license.

Q All right. Let me--let me do some--all right, so this is the company applying for the license, and you're going to have technical cooperation, you and NYNEX?

A Right.

Q Okay.

A That's correct.

Q Okay.

A And that subsequent to the filing, but as part and parcel of this whole strategy here, we're going to have the right to invest 10 per cent, and that's what that line there means, 10 per cent stake.

So the technical cooperation agreement is with the company that is applying for the license, Wharf Cable, and our investment right is with CNCL. And those are two basic understandings as to how we proceed with the filing.

Q All right. Let me make sure we've got this. Okay. You said you're 10 per cent, right?

A Correct.

Q And NYNEX, you understood, was going to do 20 per cent?

A Correct.

Q All right. Now, it says at the top again, "Disclosure shareholder agreement, October 15th, "et cetera. Could you--what about--I mean, SA. What's SA? What's that?

A Shareholder's agreement.

Q All right. What's--

A That's my abbreviation for shareholder's agreement.

Q Was it anticipated that there would be a shareholder's agreement?

A Yes, absolutely.

Q Was this conditioned on there being a shareholder's agreement?

A Which?

Q Having this ownership right in CNCL?

A No, we said we won't agree to this strategy and allow ourselves to be part of the bid--and you have to remember that at the time that we're preparing this bid, there's every expectation that there will be many other bidders, and Wharf's primary concern is to appear credible and to over--to overwhelm the government with their expertise and capabilities.

So to do that, their strategy was, well, since we can't get that thing done now, why don't you sign this agreement with this company, and then we'll do that right afterwards? And we said that's fine, provided we have a binding option and right to invest. There's no way we're going to commit to this part of it and give you the goods, so to speak, if we don't have that right.

Q All right. Now, the word disclosure, that was what, again?

A Related to how--really related to the filing itself, the document that would be submitted to the government, how it would be--what would it say, what will be disclosed about this.

Q All right. And what was your understanding about what would be disclosed in the bid about your ownership right?

A That we would--it would say that we had an option, that it would clearly specify that our right to invest, pursuant to an option, existed.

Q Now, did you see language at or about this time of a draft bid showing that language?

A Yes.

Q All right. Why don't you return to the witness stand, and I'll ask you to look at a document here.

Look at Exhibit 504, please.

A Okay.

Q I'm going to do a little bit redecorating here for a second.

Do you see Exhibit 504?

A Yes, I have it.

Q It appears to be a page from a draft application.

A That's correct.

Q Is this the language, particularly in the second paragraph, that you were shown?

A Yes.

MR. MUNSON: Objection, Your Honor, leading.

THE COURT: Sustained.

Q (by Mr. Chase) Were you shown any language at that time that appears on this document?

A Yes.

Q Let me ask you to look at the second paragraph.

A I see it, yeah.

Q Yeah, I'm going to read it. "Wharf" -- I'm reading the last sentence of the second paragraph. "Wharf, as the 100 per cent owner, has offered options to NYNEX and UIH to purchase up to 30 per cent of the shares in CNCL." Do you see that?

A Yes.

Q Is that the language shown to you?

A Yes.

Q Was this language written by UIH?

A No.

Q Who wrote this language, to your knowledge?

A To the best of my knowledge, it was a combination of people within the Wharf staff and their advisors and consultants at Ernst & Young.

Q After seeing this language, what was your expectation with respect to what would appear in the bid?

A I felt relieved and certainly comforted that the actual document, at least the one that I was reviewing, accurately reflected the understandings that--or what we were led to believe at that point in time.

Q Now, look down under 5.1.8--5.1.1.8, Technical Cooperation Agreement. Do you see that section?

A Yes, I do.

Q And look at the language that says, "The second major purpose of the cooperation agreement is to document the willingness of Wharf to make available to NYNEX and UIH and the interest of NYNEX and UIH to acquire a shareholding position in CNCL that will not exceed 30 per cent in total of the CNCL shares." Do you see that?

A Yes, I do.

Q Was that language shown to you at or about the time of your notes?

A Yes.

MR. MUNSON: Do we need to move the monitor? The jury can't see the monitor.

MR. CHASE: As a matter of fact, the monitor's not even on.

THE WITNESS: Oh, it was on mine. I think you just pulled it off.

MR. MUNSON: Yeah, we seemed to move the microphone.

THE WITNESS: It was on mine, Jeff.

MR. CHASE: Wait a minute. We've got a--excuse me, Your Honor. Somehow these monitors have gone blank.

THE COURT: No.

THE WITNESS: It was on when you were talking about it.

MR. CHASE: Well, wait a minute. It's blank because I don't have anything in it.

THE WITNESS: Yeah, that's right.

MR. CHASE: It's unbelievable. Look at that. Just was testing you to see if you were aware of my technical skills.

Q (by Mr. Chase) Mr. Fries, let me go back to your notes here.

A Okay. Which exhibit?

Q I want you to go to--I want you to go to 506.

A Okay.

Q Now, 506, I run into trouble trying to read the date. Can you read the date up in the upper right corner?

A I think it says September 21, 1992. That would be my best guess.

Q All right Now, if you'll look over at the next page--

A Okay.

Q --I'm going to ask you about some specific language. These are handwritten notes of yours, right?

A Correct.

Q Now, it says, "Filing Strategy." Now, read to us what it says under Filing Strategy.

A Bid means the bid or the license application itself. "Intent of Wharf to offer equity interest to UIH and NYNEX," which basically is what we just read in the draft of the filing strategy--of the filing document itself. So this is what was--what we were told would be drafted in the document, and in so many words is what we just read from the document.

MOU refers to a memorandum of understanding or like a letter of intent, which would then lead to a shareholder's agreement.

Q Okay. And then it goes on.

A Do you want me to go on?

Q Keep going for us.

A That what's below there is sort of a time line, moving left to right, starting with the bid, which--

Q The word bid?

A Bid--

Q Okay.

A --which would be, again, the license--the document that's submitted to the government. And the three points underneath that say--or essentially the option stated and clarified that it would be 30 per cent, consistent with what we've talked about all the way up until this point in time, and that there would be a technical cooperation agreement.

Q When you say 30 per cent, do you mean combined UIH/NYNEX?

A Correct.

Q Okay.

A Right. Then there would be a side letter or agreement reflecting what we truly intended with respect to the TCA, which I'm sure you'll ask me about, followed by a letter of intent, which we would finally finish after the--even after the bid went in, we would finally finish that letter of intent and then ultimately a shareholder's agreement.

So these are the steps we would take. Since we were unable to get the two things to the right of bid completed before the bid, we would get them completed after the bid, but that there would be clear understandings among us at the time of the bid.

Q Understandings--what understanding with respect to your ownership?

A That we would have a clear option to own 10 per cent of the business, as we had been discussing for many months up until that point in time.

Q Is that conditional?

A Conditional--not necessarily, no. They were terms--

Q Well, let me ask you, look down in your notes.

A Okay.

Q Okay. Now, it says in your notes--okay. It says, "Allow us to sign SA"--I take it that's shareholder agreement?

A Right.

Q --"or LOI," letter of intent?

A Right.

Q --"with conditions." Do you see that?

A Yeah.

Q What conditions?

A Well, the things that were important to us from the very beginning were being given a period of time to fund our investment, and that was essentially the primary one, and that the license would be issued. Clearly, that's a condition. And that we would agree to the business plan that Wharf submitted to us. Those were probably the principal conditions we were considering, which are consistent with the conditions we've been talking about to this point in time.

Q Was NYNEX's participation a condition?

A Never.

Q Was Wharf board of director approval a condition?

A No. I mean, as I said, and to use this--this was--this is a key moment here. This is--this is when they're "drafting us onto the team" for the purpose--forever--forever. And we never imagined that we would be part of this group, and then subsequent to providing the expertise, providing our credibility to the document, being told, sorry, the owners or the boards say no, you can't really do this, it just--it was not something that was ever discussed.

Q And if it had been conditioned on that, would UIH have allowed its name to be used in the bid as it did?

A I would say no. No.

Q Now, let me ask you to go to Exhibit 515.

A What was the number?

Q 515.

A Okay.

Q And that's the handwritten notes.

A Okay.

Q Do you have Exhibit 515?

A Yes, I do.

Q All right. This is a draft. It's looks like a transmission of a technical cooperation agreement from you to Mr. Bellis, and I'm going to ask you about the handwritten notes that appear on this piece of paper.

A Okay.

Q Do you see that?

A Yeah.

Q Is that your handwriting

A Yes, it is.

Q And these notes were made by you?

A That's correct.

Q Do you remember generally the circumstances?

A Yeah, we were again--this is really a second generation of the set of notes we just looked at, sort of, again, refining the filing strategy, clarifying what was going to happen here.

Q All right. Now, here's where you're going to really have to assist us.

Could you look down at the bottom where I believe it says "option" and tell us what that says and then explain to us what it means?

A Well, again, moving left to right, bid--the date of September 30th is sort of the key event here, at which point in time the document is submitted to the government, the partnership and the strategic partners are established, and from

that point forward, you know, it's in the hands of the government.

So consistent with the timing of the bid, I've written underneath there that we need an option. We need clear rights here to invest. And the thing--and what it says is "option" in the box. "Wharf/UIH agreement on timing and funding."

Q Okay. What did you mean by that?

A I mean that we would need to--that the option, to be an option, would need to have certain terms established; in particular, the terms as to when we would fund, how much would be funded at that point in time, those sorts of things.

Q All right. Now, in the far right box under SA License, it says--it looks to me like it says "conditional," and then it's hard to read. Can you read that?

A It says, "License or final approval," which means that certainly the license has to be issued for us--for there to be an investment, and that, you know, it would have to be acceptable. It would be consistent with what we were expecting from the license application.

The second is financing. I think that says financing. I'm not really quite sure what that reflects.

Q If you don't know, we can't help you.

A It could reference third-party bank financing. It very well could be a carryover of the option concept into that agreement.

Q Okay. Any other conditions that you notice on this page?

A No.

Q Now, let me ask you to look at Exhibit 519.

A Okay.

Q What is 519?

A 519 is a page from the then most current business plan prepared by Wharf Cable.

Q And that--

A It looks like it's dated September 23rd.

Q 1992?

A Correct.

Q And you get that date off of the top here?

A That's correct.

Q All right. And that--I want to ask you not about the business plan, but I want to ask you about your writing over here. What's all this mean?

A Well, as this filing strategy was evolving, I continually made it clear to the Wharf Cable executives, and this is after a significant discussion with Mark Schneider and Mr. Elsner, et cetera, that we need a clear option to invest.

And subsequent to those discussions, as well as subsequent to seeing the draft language that said "option" in it, the draft language of the bid document, I said we need to clarify these terms. We need to start talking about the key terms of what the option will contain.

And we just happened to be sitting in a room at Wharf Cable.

Q Who's we?

A Mr. Fung and myself.

Q Okay.

A And I sort of laid out for him in my own writing here some of the--the issues we need to clarify, in particular the number of days after license that we would have to exercise the option.

The second issue was how many months of funding we would have to demonstrate in order to exercise the option.

So if the option were exercised six months after the license, we were talking about making sure there was a period of time where we showed up with enough money to fund the business for a period of time.

And the third point, I'm not sure what that means other than it relates to the TCA, I guess. I never fully understood what that piece of it meant.

Q All right. Let me ask you this: You wrote down these two things. Did you get an option at that time prior to the bid?

A No, what we received at that point in time when I was--let me back up and say one other thing. I may--I specifically asked Mr. Fung to make sure that this was going to work with Mr. Ng and other folks at Wharf. I mean, this was--it couldn't have been any clearer to him what our issues were and what was important to us. I asked him to make sure that these kinds of issues were going to be okay. And what came back was, "Fine, understood. Let's go forward with this filing strategy.

You will be given a right to invest. You know, the terms will be sorted out. That's a promise.

Q Okay. So when you say you will be given a right to invest, in your mind, how did that work?

A That there would be some meeting or document that would clarify this right, and that we would be essentially waiting--or going naked on it to some extent from the point in time of the application until that was reached. So the promise was made at that point in time, though.

Q All right. The promise that you would get the right?

A Correct.

Q Let me ask you to look at 522.

A Okay.

Q 522 also appears to be handwritten notes of yours, and these appear to be from September 23, 1992; is that right?

A That's correct.

Q All right. I'm going to ask you just about one portion of these. Do you see down at the bottom where it says--well, why don't you tell us what it says.

A It says, "Know," K-N-O-W, which is confusing to me, but that's what it says. It says, "Sign shareholder's agreement with comfort, conditional upon funding our share and showing commitments," or "commitment."

Q What does that mean?

A Again, that's just further refinement of what we're talking about. It was our full understanding at the time the promise was made that we would immediately move to documentation. I mean, all of the time lines and--the left to right time lines I showed you, or you showed us that I drafted, show bid document, and then moving to documentation.

So the expectation was that we would move to that documentation shortly thereafter, and that was the general agreement. But the promise was made--we made it clear to Wharf that we were unwilling to accept this strategy, this time line, without a clear right at the time the bid was submitted--

Q All right.

A --whether that right would then be incorporated in those documents.

Q You were comfortable with that?

A I was, yeah--

Q Why?

A --at the time. Up until that point in time, we had been dealt with very fairly, as far as we could tell, in a forthright manner. We had--we had committed a tremendous amount of resources for a company of our size. We were willing to be part of the filing strategy with this consulting agreement that under different circumstances we would have never entered into. I had seen a draft of the bid document that said "option" in it. I had sat down with a very important executive in the company who made it clear to me that this was going to happen this way.

Q Who's that?

A Mr. Fung--

Q Okay.

A --who was basically commanding the whole filing process, the whole bid process.

Q And did he tell you he had been talking to Mr. Ng?

A Yeah, that's my--

MR. MUNSON: Objection, leading, Your Honor.

The Court: Overruled.

Q (by Mr. Chase) Go ahead.

A Yes. I made it clear that I had checked with my superiors, and I expected him to do the same, as to your understanding here.

Q All right. Now, let me ask you, did you then go ahead and sign the technical cooperation agreement?

A Yes, we did.

Q Let me ask you to look at Exhibit 524. Exhibit 524 is a September 23, 1992, draft of the technical cooperation agreement; is that correct?

A Correct.

Q Now, let me ask you to look over at Paragraph 14.7.

A Okay. I see it.

Q Now, this is draft language in 14.7 that says, "This agreement supersedes and invalidates all commitments, representations, warranties and other agreements relating to the subject matter hereof, which may have been made by the shareholders, either orally or in writing, prior to or contemporaneously with the date hereof," et cetera. Do you see that?

A Yes, I do.

Q All right. Let me just make sure nobody misses it. I'll put it up here.

MR. CHASE: Sorry, Your Honor, you're going to have to read the guy in--

Q (by Mr. Chase) All right. So now that's the language, and it has a line going through it. Do you know who drew that line through it?

A To the best of my recollection, that was Mr. Fung.

Q Did that language appear in the signed draft of the technical cooperation agreement?

A No, it did not.

Q Can you explain to us why it is that language was omitted?

A I made it clear to Mr. Fung upon reviewing the draft of this cooperation agreement that a clause like this would fly in the face of our understanding, and that we could not sign an agreement that stated everything we've talked about, agreed to, committed to orally or in writing up until this point in time is invalidated. That would have been completely inconsistent with our understanding and our agreement up to then.

Q Well, what understandings and agreements were you attempting to preserve by omitting that language?

A The first was clearly our right to invest, that we would--that we would be given a right to invest without any uncertainty in this project if we went forward with this filing strategy.

Number two, that this technical cooperation agreement was not intended to be actually implemented, but was, in fact, something that we expected to be activated when we became shareholders, or some basis of it would be activated when we became shareholders, and that it was principally for the purpose of the bid document to demonstrate that Wharf had available to it some strategic expertise.

Q And did Mr. Fung then agree to take that language out so you could preserve those rights?

A That's correct.

Q Now, let me ask you, staying with--staying with that Exhibit 524, if you'll look at the first page of that draft, it indicates the technical cooperation agreement in that draft was going to be between Cable Network Communications Limited and UIH. Do you see that?

A Yes, I do.

Q Did that change?

A No.

Q Well, let me show you the signed copy.

A Wait, what do you--I'm not sure what you mean by change.

Q Well, not in that draft. Let me ask you--take a look--

A Oh, you mean who the--who the parties were?

Q Yeah, take a look at 531.

A Yes. Yeah.

Q Now, 531 is the executed technical cooperation agreement. Do you see that?

A Yes, I do.

Q And that's Wharf Cable Limited. Do you see that?

A Yes, I do.

Q And in the draft, it's Cable Network Communications, Ltd.

A That's correct.

Q Okay. Can you explain that change to us?

A Yes. If you remember that diagram when I had the pointer, the company that's submitting the bid for the licenses is Wharf Cable Company.

Q Hold on a second.

A Okay. The reason it was changed was to make it consistent with that diagram which Mr. Fung created, was to make sure that the entity to which we were providing the

support and the expertise was, in fact, the company that held the license, or Wharf Cable--

Q Okay.

A --and not CNCL.

Q CNCL was what?

A That was the entity we would be investing into.

Q All right. And so does that explain the change from the draft--

A Yes, it does.

Q --to the final TCA?

A Yeah, we wanted to make sure that this--this cooperation agreement, this technical consulting or cooperation agreement was made with Wharf Cable and not the company with whom we had the understanding as to our investment rights.

Q Okay. Mr. Fries, after signing--I assume you were in Hong Kong when you signed the technical cooperation agreement?

A Correct.

Q Did you then leave Hong Kong?

A Yes, to the best of my recollection, I did.

Q Did you see the franchise application before it was put into its final form?

A No, I did not.

Q And when did you see the section of the franchise application that referred to UIH's rights?

A Oh, to the best of my recollection, it would have been a matter of days following the actual submission on September 30. So sometime in the first week of October, first few days of October.

Q What was your reaction to the actual language that actually appeared in the application as submitted?

A Well, surprise at first. I mean, it was clearly not what we had talked about. It didn't say--it didn't reflect our understanding at the time that I had left Hong Kong prior to the finalization of the document.

Q Was it the language you had been shown?

A No, it was not.

Q Let's look at Exhibit 549, please. 549 is the corporate and finance section of the bid as it actually was submitted, and let me ask you to look over at this language.

A What page?

Q Well, I'm going to tell you in a minute. Okay, look over on Page 5.

A Of 549?

Q Yeah, it's one of the first few pages in the corporate finance section.

A Yeah, okay, I've got it.

Q Now, the language is, "If Wharf Cable is successful in its license application, Wharf will consider the introduction at the appropriate time of NYNEX, UIH and other strategic partners as co-investors to purchase up to 40 per cent of the shares in CNCL." Do you see that?

A Yes.

Q Is that the language you're talking about?

A Yes.

Q And that's not the language you saw before you left Hong Kong?

A No, it's not.

MR. MUNSON: Objection, Your Honor, leading.

THE COURT: It is.

Q (by Mr. Chase) Well, let me ask you--

THE COURT: Sustained.

Q (by Mr. Chase) Before you left Hong Kong, is this the language you saw?

A Yes.

Q That Wharf, as the 100 per cent owner, has offered options to NYNEX and UIH to purchase up to 30 per cent of the shares in CNCL?

A Correct.

Q And is that what you expected to see in the bid?

A Yes.

Q Now, let me ask you to stay with the bid application for a minute here and to look over at Page 7. Not the bid--yeah, the application, the final application as submitted.

A Okay. I see it.

Q Look over at Page 7.

A I see it.

Q Do you see that diagram?

A Yes, I do.

Q All right. What I'd like you to do is compare that diagram as it appears in the bid as submitted to the diagram as drawn for you by Mr. Fung. And if you can--I realize this is an impromptu exercise.

A I can--I remember the diagram.

Q Okay.

A The principal difference is that in--the diagram in the bid document has omitted the lines from UIH to Cable Network Communications, or CNCL, the ownership lines.

Q And did you see that for the first time upon seeing the document as actually filed?

A Yes.

Q And you say this was all within a few days after September 30, 1992?

A Yes.

Q Did you--where were you?

A In Denver.

Q At your offices?

A Correct.

Q Let me come out from under the cardboard before I ask another question.

What was your reaction?

A As I said, I was surprised. I felt somewhat concerned that perhaps I should have stuck around and looked at the final draft since a change like this had been made, and I brought it to the attention of Mr. Elsner and Mr. Schneider--Mark Schneider, that this is not consistent with our understanding and we should seek to clarify this.

Q What was their reaction?

A They agreed this is something that needs to be clarified.

Q Now, in some of your earlier notes, you indicated that there might be a side letter. Do you remember that?

A Yes.

Q Had you received any side letter up to this point in time?

A No, we had not.

Q Now, when you saw the language in the bid was not the language that you were shown, did you pick up the phone and call Mr. Fung or Mr. Ng and say there's been a terrible mistake here?

A I don't recall if I did that myself or whether Mr. Elsner or Mr. Schneider did. I don't recall.

Q Were you in Denver at a meeting on October 8, 1992--

A Yes, I was.

Q --where Mr. Ng was in attendance?

A Yes, I was.

Q Now, first of all, let me ask you this: Were you in attendance the entire time of a meeting between Mr. Ng and Mr. Schneider and Mr. Elsner?

A No, I was there for, oh, maybe half of it during the first portion of it.

Q Were you there during any portion where Mr. Ng was presenting to UIH what he wanted from UIH?

A Yes, I was.

Q Can you describe that for us, please?

A Well, when the bid went in, Wharf, as you've probably been told, was the only bidder, unbeknownst to anybody up until the moment the bid went in. Prior to that, they were expecting one, maybe two other bidders.

So their immediate concern was trying to find out--trying to create the resources and establish the team necessary to begin working on what they believed would be a successful licensing process. They didn't want to waste any time. Since they knew they would most likely be the winner after the bid went in, they wanted to assemble a team to rapidly start working on implementation of the project. And he specifically requested that we--the people that we had committed to the project up until that point in time, Mr. Pittman, Steve Moss, Blake Williams, become essentially full-time members of his management staff, and in particular that Mr. Pittman become acting managing director or acting general manager; in fact, the senior operating guy running the show.

And we--well, you're going to ask me next, but that was essentially his request, that we commit really on a much more significant level, since we all kind of expected we would be the winner, since there were no other bidders, and he didn't want to waste any time. And he knew he needed our help to do that, and he requested that.

Q And you were present during that discussion?

A Yes, I was.

Q Prior to him coming to Denver, or prior to him showing up in your office in Denver, had there been discussion among the UIH people about what you would be asking for Mr. Ng?

A Yeah, we expected one of the reasons he was coming to visit us in Denver was to make that request, and we clearly talked about clarifying this issue about our option and our right to invest in no uncertain terms.

Q Were you present in the discussion relating to the option?

A No, I was asked to step out for the primary purpose of keeping the meeting small and among, really, the senior people at that time, which would be Mr. Ng, Mr. Elsner, Mr. Schneider.

Q Following that meeting among Mr. Ng, Mr. Elsner and Mr. Schneider, did Mr. Schneider come talk to you?

A Yes.

Q And what did you--what did he tell you and what did you do?

A He made it clear--

MR. MUNSON: Objection, Your Honor, hearsay.

THE COURT: No, overruled.

THE WITNESS: He said they had reached agreement, that we had agreed to commit the resources, subject clearly to us being given an option to invest in this project, that we would have six months after license award to fund our portion of the project, that we would have to demonstrate at least 18 months of funding, which would mean, you know, some number, substantial number, or else we couldn't exercise that option; reconfirming that our cost would be capitalized into the product as opposed to being reimbursed at that point in time.

Q (by Mr. Chase) Explain that.

A Well, we had committed early on, really in the summer of '92, that we would be--once we--again, I use this metaphor in terms of, you know--

Q Draft--

A --considered as a draftee into the project, that we would commit our resources and our time at our cost, and that we would not seek reimbursement, but that we would capitalize those costs into the project, and if the project were unsuccessful, that we would essentially--those would be our losses. That was the understanding at that time.

Q Did he--did he tell you what it would cost you to invest?

A No.

Q Did he tell you how your cost would be determined?

A We may have discussed that, but it would essentially be time--you know, your direct cost; I mean, demonstrable costs.

Q Oh, you're still talking about the capitalization?

A Yes, I am.

Q I'm talking about the 10 per cent interest.

A Okay.

Q How was that going to be determined how much that would cost you?

A You mean how--what 18 months would be? I'm not--

Q No, how much 10 per cent would cost.

A It wouldn't cost us anything. I'm not sure I'm understanding your question.

Q Well, how do you pay for it?

A You--we would write a check within six months after license award for--in an amount equivalent--or be able to demonstrate, at least, that we had the funding for the first 18 months of the project. That funding would be determined by the business plan--

Q All right. And--

A --that number.

Q And then your share would be 10 per cent of that?

A Correct.

Q All right. Now, it's been noted in this trial that you have notes, a lot of notes of meetings; is that right?

A That's correct. Well, that seems to be correct.

Q Do you have notes of meetings internally with people at UIH?

A Generally not. I mean, most of my notes are with people outside the company. It could be, but typically my notes involve third parties when I'm out of the office in a meeting in Hong Kong or somewhere around the world. I want to make sure I remember things. But that's not--there's no hard and fast rule about that, but typically it's with outside parties.

Q Do you remember whether you wrote down your discussion with Mr. Schneider?

A No, I--to the best of my recollection I did not, but it certainly wasn't something I was going to forget.

Q Did you forget it?

A No.

Q What were your marching orders?

A My marching orders were to continue implementation of that time line that we showed with the boxes moving from left to right. The bid had come--had gone in. We had received our right as we understood it, and we were moving towards that shareholder's agreement, which would incorporate that right.

So we were fully--I was told to basically continue upon that path and get that implemented.

Q Now, earlier I showed you a draft shareholder's agreement from the November, '92, time period. Do you remember that?

A Yes, I do.

Q And that shows to be a three-way agreement, or proposed agreement, among UIH, NYNEX and Wharf, right?

A That's correct.

Q And is that the documentation that was in process?

A Yes, that was--that is.

Q All right. Look at 707 for a minute. 707 is dated November 4, 1992. Do you see that?

A Yes, I do.

Q And this is the draft shareholder's agreement among the three parties I just mentioned?

A That's correct.

Q Now, let me ask you to look over at Paragraph 13 in the draft.

A I don't have--I only have the first page of that for some reason.

Q Oh, okay.

A I'm missing the document.

Q Let me give you my copy.

MR. CHASE: If I could approach the witness, it will be faster than getting it out of--

Q (by Mr. Chase) Now, it appears to have your notes all over it.

A Okay. Which page?

Q I'm looking at Paragraph--Clause 13, Section 13, whatever you guys call it.

A Okay.

Q Let me get that up on the screen for a second here.

All right. It says, "Pre-agreement matters. Emil Fung to supply details." Do you see that?

A Yes, I do.

Q What's that all about?

A To the best of my recollection, that refers to our agreement essentially reached in Denver with respect to our

right to invest, and that that would be incorporated into this document by Emil Fung when he got to it, essentially.

Q Okay. Do you know why it wasn't incorporated at this point in time?

A Well, I don't remember the exact reasons. There could have been--well, I seem to recall that we were concerned about maybe not introducing it too soon in the process because NYNEX--since our discussions with Wharf were separate and apart from our discussions with NYNEX, and this was really two distinct relationships at that point, that that would be something we put in later on in the process to give them time to sort of absorb what we had been promised and given.

Q You better explain that one.

A Okay.

Q Run that by me again.

A Okay.

Q What's that got to do with NYNEX?

A Well, we--at some point in time NYNEX would need to be apprised of our option and our right to invest, and it's simply a matter of when that would be the appropriate time to do that.

Q Okay. You may need to be apprised if you were going to do the three-way?

A Correct.

Q And to your knowledge, had NYNEX been apprised up to this point in time?

A No.

Q Had you been apprised of any relationship or deal between Wharf and NYNEX, if any existed?

A No.

Q Do you know whether Wharf was having separate discussions and negotiations with NYNEX?

A Subsequent to the bid going in to the government, NYNEX was really, to the best of my recollection, in flux, seeking board approval, not seeking board approval, likely to get it by this date, not sure if they'd get it by that date. It was--as long as there was some possibility they'd be involved, we were willing to do a three-way document just to keep things simple. It was never clear to me where they stood.

Q Okay. Do you remember having any face-to-face negotiation with them during this period of time?

A With respect to what?

Q A shareholder's agreement.

A No.

Q Do you know, or were you told whether they were talking to Wharf separately?

A I presumed as much, but I don't know that I was told.

Q Why would you presume that they're talking separately?

A Well, I presume that they had a copy of this agreement, too, and since I didn't speak to them, I assumed Wharf spoke to them.

Q Okay. And when you were speaking to Wharf, were you speaking with NYNEX as well?

A No, typically not. No.

Q Now, let me ask you to look over at 734--Exhibit 734.

A Okay.

Q Exhibit 734 appears to be a memo from you to Mr. Gene

APPENDIX BP

Excerpt from Direct Examination of M. Fries

March 5, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 4294; Transcript 2137)

Excerpt from Direct Examination of M. Fries

March 5, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 4294; Transcript 2137)

A In principle, yes.

Q Okay. And then it goes on to say, "MTF"--meaning you--"expressed his feeling that the franchising timing will be held to by the government, therefore, license award 12-15-92, license issued 1-15-93"; do you see that?

A Yes, I do.

Q Did you understand that to mean the cable TV license?

A Yes, I did.

Q And at the time Mr. Ng was asking for UIH's services, was it believed that he would have a very short time fuse for implementation?

A Yeah. He felt that the license would be issued in a matter of months and that he would be held to a number of constraints with respect to final implementation of the project after license award. We all did.

Q Was that expressed to you as one of the reasons why he needed your assistance?

A Yes.

Q Now look over at the next page, please, and Mr. Dvorak says, "Wharf has already been approached relative to granting

UIH an option to invest subsequent to award of license"; do you see that?

A Yes, I do.

Q Is that true?

A Yes.

APPENDIX BQ

Excerpt from Direct Examination of M. Fries

March 5, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 4299-4308 Transcript 2142-2151)

Excerpt from Direct Examination of M. Fries

March 5, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 4299-4308; Transcript 2142-2151)

leading to that. I mean, we fully expected it, yes.

Q All right, now, let me ask you to fast forward here for a minute, and I'm going to talk about NYNEX again.

A Okay.

Q Just for a moment. We showed you the three-party draft shareholders agreement in the fall of '92.

A Right.

Q And that document wasn't signed, right?

A Correct.

Q Why not?

A Primarily because--when you say the fall, you referring to pre bid or post bid, sorry?

Q I'm talking about post bid. You're right, the fall's--

A Right.

Q --a big period. Post bid, November.

A Right. Primarily because it became increasingly clear that NYNEX wasn't interested in the project and there was really

delay and postponement on everybody's part it looked like, it just wasn't coming together, which gave us concern.

Q Did you have occasion to meet with Mr. Ng in London in January?

A Yes.

Q January '93?

A That's correct, yes, I did.

Q And at the time you met with Mr. Ng, were there others there as well?

A Yeah.

Q Who?

A Mark Schneider, Mark Booth, who worked for us at the time, I believe Dave D'Ottavio may have been there for some period of that, if not all of it.

Q Now, was this at a time after which you learned that NYNEX wasn't going to be involved?

A Correct, yes, it was.

Q. Were there discussions with Mr. Ng in London about NYNEX's non-involvement and what effect, if any, that would have on UIH's rights?

MR. MUNSON: Objection, Your Honor, leading, compound--

THE COURT: Sustained.

Q (by Mr. Chase) Was there any discussion about what effect, if any, the NYNEX situation at that time would have on UIH's rights?

A Well, you have to remember that at the time the license had not yet been issued, so Wharf was still--the project was still in the licensing phase. And, you know, Wharf was very concerned about our reaction to NYNEX's expected withdrawal.

Q What did Mr. Ng say to you about that, or say to the group?

A Exact words I can't recall, but the general--

Q No, I don't--I don't need exact.

A --message was, "This is--this is what's happening, we need to remain quiet about it, we need to stay together, we need continued commitment. This isn't a good thing for the licensing process, so you need to stick with us," was basically the message.

Q Well, did you understand him to mean stick with us in image or stick with us in fact or both?

A Both.

Q Okay. What was UIH's reaction?

A You know, as I've said a couple of times, NYNEX was in and out from day one, and while we always were happy to accommodate Wharf's desire to entertain their interest in the project, their interest being NYNEX's, we never viewed them as being in definitively at any point in time, so it didn't shock us and it didn't disturb us. In fact, we offered suggestions for

alternative partners who may very well make sense for the project, and they were interested in those ideas.

Q You mentioned those to Mr. Ng?

A Sure.

Q Did Mr. Ng at that meeting indicate that NYNEX's withdrawal would mean all bets were off as to UIH's right?

A No. If he'd have said that, you know, I don't know what would have happened. We certainly did not make that statement, no.

Q Okay, let's look at Exhibit 982, please. 982 is a January 26th, 1993, memo from Mark Booth to Stephen Ng regarding the London meeting which apparently occurred a short time before this document; do you see that?

A Yes.

Q Is that consistent with your memory as to when this London meeting occurred?

A Yes.

Q Tell us who Mark Booth is, please.

A Mark Booth at the time was running our Programming Division. He prior to this launched MTV, the music channel, throughout Europe for Viacom and had worked for a number of media companies. We had hired him to be our programming specialist throughout the world.

Q And was he involved in these discussions in London where you were?

A Yes I think he was, yeah.

Q All right, now let me show you--and ask you, actually, about certain portions of Mr. Booth's memo. "Dear Stephen: We all enjoyed getting together with you in London and found the meeting to be a very useful exchange of ideas about how to maximize the value of the Wharf-UIH investment in Hong Kong"; do you see that?

A Yes.

Q Now, following this memo, did you receive any protests, either directly or indirectly, from Mr. Ng or Mr. Fung or anybody else associated with Wharf regarding that language?

A No.

Q Now, was there discussion in London with Mr. Ng about how to maximize the value of the Wharf-UIH investment in Hong Kong?

A Yeah, in--this is written from the perspective of programming, and we talked about a number of issues relating to Wharf's programming strategy. And by programming we mean the actual channels they're going to put on the network, how those channels are constructed, what kind of programs are on them. And we offered Mark's assistance in terms of providing some additional ideas and ways of maximizing the value of a very big part of the project, which is programming.

Q And why would UIH be offering this kind of advice in London at this time?

A Well, that's why we were in the deal, to provide this kind of advice and to be a sounding board as well as a source of

ideas as to how these sorts of elements of the project could be implemented.

Q And what was Mr. Ng's reaction to this discussion and this advice?

A To the best of my recollection, you know, the ideas were of interest to him and he asked for a memo to be put together as to how these ideas might be actually implemented or further reviewed.

Q Okay. Is this that memo as far as you know?

A Yes.

Q All right, now, I'm not going to ask you to read the whole thing, but you have seen this document before?

A Yes.

Q And what does Mr. Booth do, generally, throughout this document?

A Oh, I think he's basically articulating our thoughts on both the current programming plan as well as other ideas or other ways of creating value, of generating channels. You know, our philosophy on that. I'd have to read it a little more closely to be more specific.

Q Well, let me ask you a couple of questions here. It says here, "UIH"--I'm reading under "Programming Philosophy and Principles"; do you see that?

A Yep.

Q "UIH expressed concern about the programming strategy and Mark Schneider stated that he remained uncomfortable with the business plan as presented and that it would be extremely difficult to raise financing without significant improvement"; do you see that?

A Yes.

Q Was that one of the subjects discussed in London?

A Yeah. You have to keep in mind that we had always maintained from the very beginning that our agreement to their business plan was required. And we actually believed that that gave us some--some leverage to help them review the business plan, because they knew that we'd have to be in agreement with it and that the ideas that we would be giving them would be ideas that would improve the business for everybody.

Q Did you, yourself, from time to time give thoughts on the business plan?

A Sure.

Q Why?

A Because that's why--we were all going to be investors in the same business, and one of the reasons that we were brought in was for our strategic value, knowledge of the business, and for the ideas that we could provide to improve the business. I mean, that's the reason that we were involved in the first place.

Q Let me ask you this--this is referring to a meeting in late January '93--if UIH didn't have a right to invest in the business, would it have cared for any reason whatsoever about Wharf's programming?

A I wouldn't think so.

Q Or its business plan?

A No.

Q Now, let me ask you to look at Exhibit 1041, please.

A I'm sorry, did you say 1041?

Q Yes, please.

A Okay.

Q 1041 is a letter from Mark Schneider to Stephen Ng, February 12, 1993, and this also refers to the London meeting, does it not?

A Yes, it does.

Q All right, let me look at--right here where it says, "I just wanted to follow up on our London conversation on a number of points"; do you see that?

A Yes.

Q The only one I'm going to ask you about is the second, where he says, "Second, we have had some recent success in improving our financial strength and would like to discuss having a stake in the venture in the 25 percent range, provided that NYNEX is not going to participate in the business as an investment"; do you see that?

A Yes.

Q Does that accurately reflect discussions that you were present at in London?

A Sure. I mean even from the early letters of intent it was clear that NYNEX wasn't going to be in--may not be in the project and that Wharf would take up that extra piece, the 90--the full 90 percent, in anticipation of making it available to another party. Since we knew we had 10, we were wondering whether that party could be us since the original understanding was that Wharf would take it all with the exception of our 10 if NYNEX didn't end up being in, which is what's happened here, and we were saying, "Well, how about us, we'll take some of that."

Q What was Mr. Ng's reaction to this?

A His principle reaction was, "This is not the time to be changing things. You know, we don't want word of NYNEX's departure to get out. The last thing we should be doing is making other changes that might disrupt the licensing process." So he'd have to get back to us on it, but it's not something we could get sorted out right now.

Q Did they--did the fact that he was going to get back to you on raising the stake to 25 percent compromise in any way your 10 percent?

A No, no.

Q Do you know of any other ownership issues that were discussed with Mr. Ng in London other than this issue of raising the percentage?

A No.

Q And is this issue of raising a percentage one that kept coming up in the following months?

A Sure. I mean it was in our best interest to continue to raise it, as we continued to raise it up until the very end.

Q And what was Mr. Ng's reaction?

A Oh, it depends on which point in time.

Q All right, we'll do that, we'll--

A Yeah.

Q I won't ask you for a general statement. Let me go--let me ask you to look at Exhibit 1075.

A Okay.

Q Exhibit 1075 is a February 27, 1993, letter from Mr. Ng to Mr. Schneider, and on the point of ownership, he says, "I mentioned to you in London that given the NYNEX situation we should put ownership issues on hold until after the service launch "; do you see that?

A Yes.

Q What ownership issue was discussed in London?

A The principle issue discussed was increasing our ownership stake.

Q Was there any discussion in London with Mr. Ng as to whether you would have your 10 percent ownership?

A No.

Q Was there any discussion with Mr. Ng about him having to go back to his board about UIH having a right to invest?

A No.

Q Was there any discussion about any conditions or any other conditions being imposed on UIH's right to invest?

A No.

Q I'm going to talk to you now about the documentation

APPENDIX BR

Excerpt from Direct Examination of M. Fries

March 5, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 4329-4331; Transcript 2172-2174)

Excerpt from Direct Examination of M. Fries

March 5, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 4329-4331; Transcript 2172-2174)

A For our benefit.

Q Now, let me take you back to the Exhibit 1213, the July 15, 1993--

A Um-hum.

Q --memo from Mr. Fung to Mr. Ng.

A Um-hum.

Q Let me ask you to look down in the middle of the first page of the memo.

A Of the--okay.

Q You see that?

A Not there yet. Okay. Yep, I see it.

Q All right, I'm going to fit this in here. Okay. Now, Mr. Fung is reporting to Mr. Ng about the draft, and he's saying, "UIH's option, Euro version, lasts for 180 days following our joint approval of the business plan." Do you see that?

A Yes.

Q Now, where did that option come from?

A That's a restatement of our original deal with some amendments to it, namely that instead of having six months from license award to exercise the option we have six months from the date at which we agree with their business plan.

Q Why was that change made?

A Well, the license at this point had already been issued and we were trying to pick an appropriate date from which to start the clock ticking, essentially.

Q Was there any objection to that modification?

A No. Because this was assumed to be a very--happen quite rapidly, actually.

Q Now--

A Even more importantly, it was something that we controlled. We could have agreed with the existing business plan. It was something that was really subject to our own time frame.

Q Now, this is the second time in the last few minutes you've talked about something that's in your control or your benefit; are these things that are in your control or your benefit, are they waivable by you?

A Sure.

Q What does that mean?

A It means if it's--if it's something for our benefit and we choose to--and we're either happy with it, therefore the condition goes away, or we agree and decide that we no longer

need that as a condition, and we waived that condition and we move forward.

Q Does this happen from time to time in business transactions?

A Sure. Sure. Yeah, it's very common.

Q All right, now, the next bullet point says, "UIH is asking for a 15 percent equity stake in CNCL with their previous up front costs included as part of their equity contribution." Do you see that?

A Yes.

Q And then it goes on--and I'm going to skip a sentence--it goes on to say, "I offered that 10 percent is more appropriate and was the basis of our original understanding."

Do you see that?

A Yes.

Q What original understanding?

A What we've been talking--

MR. MUNSON: Objection--

THE WITNESS: --about all--

MR. MUNSON: Objection, Your Honor, he's asking this witness to say what somebody else said in this memo. He didn't write it.

MR. CHASE: I'll rephrase.

THE COURT: All right.

Q (by Mr. Chase) Did you have an understanding about the 10 percent?

A Sure, it was our option and right to invest at that level.

Q Now, between the time of your June 10th meeting with Mr. Fung, and I take it--and Mr. Ng, and that's this Exhibit 1192, I take it that was a face-to-face meeting?

A Yes.

APPENDIX BS

Excerpt from Direct Examination of M. Fries

March 5, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 4333-4335; Transcript 2176-2178)

Excerpt from Direct Examination of M. Fries

March 5, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 4333-4335; Transcript 2176-2178)

Q Now let me ask you to look at Exhibit 1169.

A Okay.

MR. CHASE: Your Honor, I'm aware of Your Honor's statements earlier and I think I'll just use this document and then I'll--

THE COURT: All right.

MR. CHASE: Now, I'm probably not going to be finished with the witness, but I can't have that much more.

THE COURT: Okay.

MR. CHASE: "Can't" not being a metaphysical thing but--or a physical but intellectual at this point.

THE COURT: Just get on with it, will you?

Q (by Mr. Chase) Mr. Fries, look at 1169, please. These are United International Holdings, Inc. Board of Director minutes, May 25, 1993; do you see that?

A Yes.

Q All right, let me just get on with it here and ask you to look over at the Hong Kong section, where it says, "Partnership corporate"; do you see that, in Hong Kong?

A Yes.

Q All right. Now--

A I see it.

Q Now, it says there--was this your presentation, by the way, to the board?

A Yes, I believe it was.

Q --"Currently negotiating binding memorandum of understanding, MOU, which will preserve UIH's investment rights under the following conditions"; do you see that?

A Yes.

Q What did you mean by that "will preserve UIH's investment rights"?

A Our option and right to invest in the project pursuant to the agreement reached in October of '92.

Q And then it goes on to say, "Up to 20 percent equity interest, up from original 10 percent," is that right?

A That's correct.

Q Now, Wharf never signed off on anything in excess of 10 percent, did they?

A No, they did not.

Q All right. Then it goes on to say, "UIH will have six months from date of agreement on business plan and

estimate a debt capital to raise equity and close transactions"; see that?

A Yes.

Q And that's what you just described as a modification to your option?

A Correct.

Q And then it says, "UIH must demonstrate sufficient capital for first 18 months of project, estimated to be approximately two-thirds of total equity capital"; do you see that?

A Yes.

Q And was that part of your original agreement with Wharf?

A Yes, it was.

Q And then it goes on to say, "Other provisions: liquidity, minority shareholder protection, Technical Assistance Agreement"; do you see that?

A Yes.

Q And what's the relationship, if any, of that to the investment right described above?

A Well, those are the issues we're--we were discussing in the context of an agreement through which we would exercise the right or which would govern our relationship after we exercised the right. So they're really very--they're separate. Those are the extra things we're asking for which would come into effect after we exercised the right to own the shares.

Q And if you can't get those extra things, do you have to go naked?

A If you don't get those things, you make a determination as to whether you move forward.

Q All right. And was UIH prepared to make that determination if it couldn't get those additional rights?

A Yeah, we did make that determination when we--when we formally attempted to exercise the option in August of '93.

APPENDIX BT

Excerpt from Direct Examination of M. Fries

March 5, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 4207; Transcript 2050)

Excerpt from Direct Examination of M. Fries

March 5, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 4207; Transcript 2050)

THE COURT: Sustained.

Q (by MR. CHASE) Let me go on to the next question I was going to ask with respect to that Part D. It says, "The subscription by NYNEX of 20% of Wharf Cable." Same question I asked before; as of the date of this memo, was that a condition?

A No.

Q To your knowledge, was it ever a condition?

A No.

Q Now, let me ask you, do you recall discussions in the late August/early September time period with Mr. Fung or Ms. Norman regarding whether Wharf would even accept conditions?

A Wharf was concerned about anybody's involvement in the project being conditional. They wanted to make sure they communicated to the government that everybody was committed and on board. So, that was clearly a concern.

Q Were you prepared in late August/early September to commit to the funding requirement?

A Subject to the dilution provisions, yes.

Q Explain that, please?

A Meaning if, for some reason, if the license were awarded--the company had been formed, the license were awarded, but we couldn't come up with our share, then we would capitalize our costs and the rest would be diluted. You wouldn't be owning that stake.

APPENDIX BU

Excerpt from Direct Examination of M. Fries

March 5, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 4209-4219; Transcript 2052-2062)

Excerpt from Direct Examination of M. Fries

March 5, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 4209-4219; Transcript 2052-2062)

A It's kind of like diluting a, you know--when you put milk in your coffee, you're diluting the coffee--well, I'm going to give a bad example. You've got it. Sorry.

Q Stick with sports, Mr. Fries. You're doing a much better job with that.

A Yeah.

Q Now, let me go back to NYNEX for a minute here. I want to talk about NYNEX and then I'm going to take you forward into September 1992.

A Okay.

Q Eventually, we'll finish out the year, too. But, I want to take you back to NYNEX for a second and ask you to look at Exhibit 304. 304 is a letter from you of July 20, 1992 to Mr. Fung, correct?

A Correct.

Q Now, you raise several subjects in this letter, but the one I want to focus on relates to NYNEX. This is July 20, 1992.

A Okay.

Q "NYNEX Telecommunications. Sonjia informed me that NYNEX is re-evaluating the Hong Kong market based upon the proposed changes to the broadcasting law. It appears that

they may have concerns about the ability of an entertainment based network to support the ultimate construction and operation of a telecommunications system." Do you see that?

A Yes.

Q Now, at or about this time, did you have conversations with Wharf about NYNEX?

A Yeah, I think they characterized NYNEX as having these concerns and it was clear to us at that point that we weren't sure NYNEX was going to be in or out.

Q Did you have any conversations with Wharf regarding that affecting your investment?

MR. MUNSON: Objection, Your Honor; leading.

THE COURT: Sustained.

Q (by Mr. Chase) Did you have any conversations with Wharf about the impact, if any, of a NYNEX decision on UIH's investment?

MR. MUNSON: Same objection, Your Honor. It's sill suggestive.

THE COURT: It is. Sustained.

Q (by Mr. Chase) What other conversations did you have about NYNEX?

MR. MUNSON: That's leading, too, but I won't object.

THE COURT: All right.

THE WITNESS: We talked about these issues. You know, in our view, NYNEX was really never in, never out, it never was brought up as an issue with respect to our involvement. Our discussions were always with Wharf. They were up until this point in time never with another party. It was never made to be a key to our closing our relationship, meaning UIH's and Wharf's.

Q (by Mr. Chase) All right. Now, let me ask you to look over at Exhibit 314. Do you have that?

A Yes.

Q Now, 314 is an internal Wharf document. Did you ever see it prior to this litigation?

A No.

Q Have you seen it since this litigation?

A Yes.

Q All right. These are Wharf Communication Investment Limited Weekly Activity Report by Mr. Fung of July 25, 1992. Do you see that?

A Yes.

Q All right. Now, I'm going to ask you some questions about this bullet point that's highlighted. This is as of July 25, 1992, it says, "Partners. Strong support maintained by UIH and Fox." Do you see that?

A Yes.

Q A true statement with respect to UIH?

A Sure.

Q At that point in time?

A Yes.

Q "Discuss potential pullout of NYNEX; no real concerns." Do you see that?

A Yes.

Q Did you discuss with Mr. Fung or anybody else associated with Wharf at that time the potential pullout of NYNEX?

A Yes.

Q Tell me what those discussions were, please?

A They communicated to us that NYNEX wasn't certain it would be able to complete the investment or was concerned about various aspects of the process including the license that may or may not be issued, the terms of that license, and we indicated that we'd do what we could to support that process, but that was really their business. It didn't have an effect on our interest and we maintained our strong support for being their cable partner.

Q Okay. And, it says "no real concerns".

A I see that.

Q Is that an accurate reflection of UIH's view over the potential NYNEX pullout?

A Yes.

MR. MUNSON: Objection, Your Honor; leading.

THE COURT: Sustained.

Q (by Mr. Chase) Now, it also goes on to say at the end of that, "UIH to arrive the week of August 3." Do you see that?

A Yes.

Q Did you, yourself, arrive in August? Do you remember that?

A There's so many meetings back and forth. I'm not sure if I did or not. I'd have to look at some notes or--you're probably going to refresh my memory if I did, but--

Q I will and we'll get to that. But, right now, I'll just keep moving on.

A Okay.

MR. CHASE: Your Honor, do you want to do the noon thing?

THE COURT: I think we better proceed until noon.

MR. CHASE: Keep going, okay.

Q (by Mr. Chase) Mr. Fries, I want to stay with this NYNEX thing for a few minutes, okay?

A Okay.

Q Look at Exhibit 470. Exhibit 470 is a big document. What is it?

A It's a draft of a shareholder's agreement.

Q All right. And, what's the date of it? What's the date on the transmittal, I should ask?

A September 16, 1992.

Q Now, on the draft shareholder's agreement itself, it indicates June 16, 1992. Do you believe that to be a mistake?

A Yes.

Q Were you in this shape on shareholder's agreements in June 1992?

A What do you mean in this shape?

Q I mean, were you this far along in documentation?

A Yeah, I think this document is indicative of where we were at this point in time.

Q In June or September?

A In September.

Q September, okay. Let me talk to you about September. Okay. Now, this document, this draft shareholder's agreement, is among Wharf Communications Investments Limited, United International Holdings, Inc., and Cable Network Communications Limited. Do you see that?

A Yes.

Q Is NYNEX a party to this agreement?

A No.

Q Turn over, if you will, to Paragraph 17 in the draft.

A I see it, yeah.

Q Now, under technical cooperation, it says, "Arrangements with NYNEX." Do you see that?

A Yes.

Q Now, tell us what you can recall from this period about this draft and about the arrangements with NYNEX at this time?

A I think it was unclear whether NYNEX would be a partner and they were--we were deciding or thinking about whether or not we'd want to utilize their expertise in some way, shape, or form, and that we may do that through some kind of arrangements with them. We meaning Wharf and UIH as a consultant or something.

Q All right. Now, look back over on the--let's go back over to the first page of the shareholder's agreement. I don't think I got it clear who all everybody is. United International Holdings is clearly you, right?

A Correct.

Q And, Wharf Communications Investments was who?

A Oh, I believe that was the company that owned Cable Network Communications Limited and was a 100% owned subsidiary of Wharf, the parent company.

Q All right. Now, Cable Network Communications Limited was who?

A That would be the entity that Wharf--that would be our co-shareholder in the project owned by Wharf.

Q Wait a minute. Let me show you a chart.

A Okay.

Q Do you want to come down here again?

A Sure.

Q I'm showing the witness 1603.

A That's correct.

Q All right. Why don't you use the microphone here. Why don't you explain to us how Cable Network Communications fits into this and how Wharf Communications fits into it and where UIH fits?

A Okay, sure. The parent company is Wharf Holdings--

Q I'll tell you what. To make it a little easier for all the jurors, just step back a little because they need to see the chart.

A So do I. There we go.

Q Oh, that's right. Hold on a second.

A Okay, that works. Good. The very top box would be the parent company of Wharf. WCIL or Wharf Communications was an entity 100% owned by Wharf basically through which they would enter into this business. CNCL is the company we would own a stake in. I misspoke; our co-shareholder is WCIL or Wharf Communications. Wharf Cable Limited would be the entity, the actual entity, that receives a license in the process or

was the entity that would own and operate the business that we and Wharf Communications would own together. So, CNCL would own Wharf Cable, the operating company, and CNCL would be where we held our ownership stake together with Wharf.

Q Is that the structure that's described in that draft shareholder's agreement?

A Yes, it is.

MR. CHASE: Your Honor, I'll move the admission of 1603.

MR. MUNSON: No objection.

THE COURT: It's admitted.

(Plaintiff Exhibit 1603 was received in evidence.)

Q (by Mr. Chase) You can return. Let me ask you now--I'm staying with NYNEX here for a while. Let me ask you now to look at Exhibit 493.

A Okay.

Q Okay. Exhibit 493 is a transmittal from Tim Belles to Emil Fung, copies to Henry Van Demark and Sonjia Norman, and it appears to be transmitting a draft letter of intent. Do you see that?

A Yes.

Q Now, first of all, let's put the draft on the screen here.

Mr. Munson: What number is this?

MR. CHASE: I'm sorry, this is Exhibit 493.

Q (by Mr. Chase) Do you see that?

A Yes.

Q Now, first of all, let's 'fess up. Whose handwriting is that?

A That's my handwriting.

Q All right. Now, tell us what a letter of intent is?

A A letter of intent is a shorter form version of a shareholder's agreement. It typically specifies the key and principal terms that would be incorporated in a shareholder agreement, but just in a shorter form.

Q All right. Now, this particular draft indicates "Wharf Communications Investment Limited, United International Holdings, and NYNEX Network Systems "; do you see that?

A Yes.

Q And, this would have been transmitted on or about September 19, 1992.

A Correct.

Q Now, at or prior to this time, had documents been prepared of a three-way transaction?

A No.

Q Okay. Now, this document indicates a potential three- way transaction, correct?

A Correct.

Q All right. Now, tell us as best you can recall how NYNEX entered into the documentation?

A Sure. As I said earlier, through the whole month of September, we were all working on all being UIH, Wharf, and on and off NYNEX as the best way to present our relationship to the government. And, there were a lot of issues involved there; optics, politics. And so, we were working towards a letter of intent followed by a shareholder's agreement which would be sort of part of the bid document. I think at one point in time, it became really just expedient or convenient to draft a shorter form agreement like this with all parties involved. That's really how this came about. It just made it easier to do.

MR. CHASE: Okay. I think now would be a good time, Your Honor. Thank you.

THE COURT: All right. We'll take our recess. And, today's Wednesday; so, 1: 30.

(11: 57 a.m. - Jury excused.)

THE COURT: We'll be in recess.

(11: 58 a.m. - Recess accordingly.)

APPENDIX BV

Excerpt from Direct Examination of M. Fries

March 5, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 4183-4185; Transcript 2026-2085)

Excerpt from Direct Examination of M. Fries

March 5, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 4183-4185; Transcript 2026-2085)

at this point and that they may want to bring a telephone partner in for that purpose, but it wasn't--they didn't give us a lot of details about their discussions or where they were in the process.

Q How did they describe NYNEX; as a telephone partner?

MR. MUNSON: Objection, Your Honor; leading and suggestive.

THE COURT: Sustained.

Q (by Mr. Chase) You mentioned telephone partner. What was the relation of that to NYNEX, if any?

A They didn't need to describe NYNEX as a telephone company. It was clear what their value added to the project would be.

Q All right. Let me ask you to look at--I'm going to show you Exhibit 244.

A Okay.

Q Let me just do a little housekeeping here. Are you at 244?

A Yeah.

Q All right. 244 is a document entitled Wharf Cable/UIH Key JV Terms; do you see that?

A Yes, I do.

Q Tell us what this is, if you know?

A Sure. This was a list of issues that I generated, I think, prior to our meetings in Hong Kong during this time frame for the purpose of really internal discussions among my colleagues as to things we ought to be thinking about as we discussed the potential investment with Wharf over the coming days.

Q Now, it indicates at the last page of this that this was prepared on June 11, 1992.

A That's correct.

Q Would that have been roughly the time you prepared it?

A Yes.

Q And, it would have been in connection with this trip you made to Hong Kong?

A Correct.

Q Now, did you give this document to Wharf?

A I don't believe we did, no. This was for internal purposes.

Q How was it used internally?

A Well, I have to be honest. I don't know that I even discussed this document with other people at UIH. I put it together for my purposes because we knew they were going to present us with a joint venture considerations--or they were going to present us with their thoughts about a joint venture. So, I on my own said, well, maybe we should start thinking

about some of the things that will be relevant to that discussion. I can't be certain that I discussed this with anybody, but I could have. If I did, it would have been somebody from UIH.

Q Now, this is described as Key JV Terms, do you see that?

A Yes.

Q Was it your view that these would be required terms in a deal with Wharf?

MR. MUNSON: Objection, Your Honor; leading, suggestive.

THE COURT: Sustained.

Q (by Mr. Chase) What was your view as to the role, if any, these terms would play in a transaction with Wharf?

A They were certainly not requirements. They were things that we should be thinking about generally in anticipation of Wharf's presentation about joint venture ideas or terms which they subsequently did. They certainly wouldn't be described as requirements. They would be--it could very easily have been read Key JV Issues or Things To Think About. That's how you might characterize it.

Q Okay. Let me point you to where it says "Partners: Wharf, UIH, NYNEX, Unidentified Media Partner" .

A Right.

Q Now, what, if any, relationship did you in your mind have that that would play in any deal with Wharf?

A Could you repeat the question?

Q It's a terrible question. It's a terrible question. Did you believe that those parties listed would have to be partners in a deal with Wharf?

APPENDIX BW

Excerpt from the Cross-Examination of M. Fries

March 6, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 4371:23-4374:20; Transcript 2214:23-2217:20)

Excerpt from the Cross-Examination of M. Fries

March 6, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 4371:23-4374:20; Transcript 2214:23-2217:20)

Q Going out again into 1992, into September of 1992 now, it is correct, is it not, that after September of 1992, there were never any draft shareholder's agreements prepared between Wharf and UIH that did not include NYNEX?

A That is correct.

Q In September, the technical cooperation agreements were signed; correct?

A That's correct.

Q And there were two of them?

A To the best of my recollection, yes; one between us and Wharf Cable and one between NYNEX and Wharf Cable.

Q And did you sign the technical cooperation agreement or TCA on behalf of UIH?

A To the best of my recollection, I believe I did. I was in Hong Kong at that point.

Q And that was an agreement -- the agreement, the technical cooperation agreement between Wharf on the one hand and UIH on the other hand, was an agreement between willing parties, was it not?

A Yes, between Wharf Cable; right.

Q Between Wharf Cable and UIH?

A Yes, that's correct.

Q You understood when you signed the technical cooperation agreement that it was going to be submitted with part of the bid to the Hong Kong government, did you not?

A Yes, I did.

Q And that didn't trouble you, did it?

A No, Wharf is a very well known, large Hong Kong company. Based on our understandings and agreements, if they were comfortable with it, we were, too.

Q And you didn't think by submitting the technical cooperation agreement to the Hong Kong government, that you were somehow defrauding the Hong Kong government, did you?

A Not at all. Our understanding was that it would become effective if we were shareholders. We had every expectation of becoming shareholders. If we did not become shareholders, it would not become effective. That was a clear understanding among the parties.

Q Now, the bid--the cable T.V. telecommunications bid was submitted to the Hong Kong government on September 30; is that correct?

A If you're referring to the bid we've been talking about for all this time, yes. I don't remember the word "telecom" in there, but that's correct, the bid for the pay T.V. license was submitted September 30; that's correct.

Q September 30, 1992?

A That's correct.

Q Here on the board. Now, when the bid went in, you did not understand that UIH had the right, but not an obligation to invest in Wharf Cable, did you?

A As I testified in my deposition and here, at that point, the clear promise was made that we would receive that option if we agreed to the filing strategy, which included sign the TCA and putting our names in the bid document as their cable T.V. partner.

Q So is the answer no, you did not have the right to invest?

A At that point, I was told we would be given--we were promised the right to invest, which was given to us in October; that's correct.

Q My question is did you have the right to invest or not when the bid went in?

A At that point in time, as I've testified in my deposition, in my opinion, no. But we were given the promise to invest, and that that promise was actually performed upon in October.

Q So you didn't have the right to invest when the bid went in?

A As I said, no.

Q And also you didn't have--you hadn't been granted an option to invest in Wharf Cable when the bid went in either, had you?

A At that point in time, no.

APPENDIX BX

Excerpt from the Cross-Examination of M. Fries

March 6, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 4419:07-4425:24; Transcript 2262:07-2268:24)

Excerpt from the Cross-Examination of M. Fries

March 6, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 4419:07-4425:24; Transcript 2262:07-2268:24)

Q Thank you. Let's look next at Exhibit 384. This is in the defendant's jury book at Tab #13. Do you have that there?

A Yes, I do.

Q Now, we looked at this briefly earlier, but I'd like to spend a little bit more time with it. Again, this is August 24, 1992. So, we're in this phase here on the time line of what UIH admits. Memo from Sonjia Norman, your lawyer, to Emil Fung. The subject is the second draft of the Wharf joint venture consideration. Correct?

A Correct.

Q And, there's a #1 that says "corporate structure and shareholders"; correct?

A That's correct.

Q Now, before that, it says--this is your lawyer writing to Wharf. "Thank you for your memorandum of 1 August 1992 enclosing your version of the revised joint venture letter of intent. I've since received the lawyer's rewritten version which, although is stylistically different from your version, essentially covers the same points. I reviewed both versions of the document and have the following comments." Correct?

A That's what it says, correct.

Q And, she addresses corporate structure and shareholdings as a note to you that says," Mike, has the 10% been agreed?" Correct?

A That's what it says, correct.

Q And then, it goes on below that. She writes, "Our signing the full shareholder's agreement after this letter of intent should be conditional upon: (a) our approval of the financial operating and programming plans; (b) board consent on both sides; (c) award of the local franchise; (d) the subscription by NYNEX of 20% of Wharf Cable." Then, she has another note to you. That's what she wrote on the first page of that document, is it not?

A Yes, it is.

Q Then, let's look at Page 2 where there's some other issues that get raised.

MR. CHASE: Your Honor, I'm going to interpose an objection at this time. Is Mr. Munson going to ask questions or is he going to read documents?

THE COURT: He's--your objection is overruled.

Q (by Mr. Munson) On the second page of her letter, there's an entry #3, "corporate governance"; do you see that?

A Yes, I do.

Q And, corporate governance relates to how a corporation is governed by its board of directors; is it not?

A Board of directors or investors or shareholders, that's correct.

Q Then, underneath that, your lawyer writes at the end of the first paragraph. "We would like to see the following issues requiring unanimous consent." Correct?

A That's correct.

Q Unanimous consent means all the votes of all the shareholders; is that right?

A That's right.

Q And then, there's a list of items where your lawyers says here ought to be unanimous consent; correct?

A Right, without my input; that's correct.

Q And, one of them is operations; correct?

A That's correct.

Q Another is alterations to the capital structure of the company; correct?

A That's correct.

Q Another is borrowing and theft, correct?

A That's correct.

Q Future capital calls?

A That's correct.

Q Acquisition, participation in other businesses, networks et cetera. Correct?

A That's correct.

Q Approval of financial and operating budgets and amendments thereto; correct?

A That's correct.

Q Agreements with other parties in Wharf Cable, correct?

A Correct.

Q Are these your notes on this document?

A No, they're not. You should be able to tell that.

Q Well, they don't look quite like yours. Your notes are more thorough.

A Yeah.

Q And then, it goes on and lists a couple of other items; introduction of new parties, decision to make loans to Wharf Cable--do you see all that?

A Yes, I do.

Q And, those are corporate governance issues that your lawyer identified in August of 1992; correct?

A Correct.

Q And, those were all open issues that hadn't been resolved by then; correct?

A They were issues that in her opinion--this was her draft without any input from me that she put on a piece of paper. I

can't claim that all those issues were either discussed or opened at that point in time. I'm not sure we even discussed these issues.

Q Look at Page 3.

A Okay.

Q Yes, Page 3. Another issue that's identified by your lawyer in this letter is transfer of shares. Correct?

A That's correct, Point 6.

Q And then, over at the top of the next page, at the end of #6, there's an entry that says, "There must be an acceptable liquidity formula for UIH as a minority shareholder available from Year 7, onwards." Do you see that?

A Yes.

Q And, this is this -- this relates to this liquidity issue that we talked about a few minutes ago. Does it not?

A Yes, it does.

Q And, liquidity for minority shareholders is an important issue, is it not?

A It can be, that's correct.

(Pause.)

Q And, as of August 24, the issues relating to corporate governance were still unresolved between UIH and Wharf, were they not?

A I'm sorry, what date did you give?

Q As of August 24, 1992, the issues relating to corporate governance were still unresolved between UIH and Wharf?

A I would have to see some other document than this. I don't think this would be the right source for an answer to that.

Q. I'm asking you for your independent of this document recollection?

A Oh, I understand. As I'm sure you'll point out to me, there were a number of agreements going back and forth. So, I'd have to look at those, and maybe you'll get to those. I don't know for sure whether we resolved all those issues at this point or whether--I don't know if we'd seen a shareholder's agreement at this point, but I'm sure you'll get to that.

Q Well, why don't you take a quick look at Volume III of your deposition, Page 496?

A I've got it.

Q Look at Line 1 through 6. Do you see that?

A Yes, I do.

Q And, my question is were you asked these questions and did you give these answers? Question by Mr. Jentes, "As of August 24, 1992, were issues relating to corporate governance still unresolved between UIH and Wharf?" Answer, "Yes." Were you asked that question and did you give that answer?

A Yes, I did.

Q Let me show you next -- there's been a little question about who Sonjia Norman was and what Sonjia Norman did on behalf of UIH. I just wanted to show you one quick thing. Is there an entry--your next document, there it is.

A Yeah, I've got it.

Q Would you take a look at that?

A Sure.

Q This is actually an entry from the plaintiff's jury book on Sonjia Norman, a little biographical deal. And, it's correct, is it not, that Sonjia Norman worked as an in-house attorney for UIH in Hong Kong from approximately December 31 until January 1993.

A December '91.

Q December 1991 until January of '93; correct?

A I believe that's correct, yes.

Q Before that, she was an attorney with the Hong Kong office of the London law firm of Denton Hall; correct?

A Correct.

Q And, Denton Hall is a prominent London law firm; is it not?

A It's a law firm in Hong Kong. I believe, it's quite large, yes.

Q And, it's based in London, is it not?

A I'm not certain if it's based in London. I don't know.

Q In any event, Sonjia Norman was UIH's in-house attorney in Hong Kong from December '91 until January '93; correct?

A Correct.

APPENDIX BY

Excerpt from Cross Examination of M. Fries

March 6, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 4557-4558; Transcript 2400-2401)

Excerpt from Cross Examination of M. Fries

March 6, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 4557-4558; Transcript 2400-2401)

A Yes, you did.

Q All right. Then to the right of where we were--

A Um-hum.

Q --and down a little bit, says, "Action Items Time Table," correct?

A That's correct.

Q And under that it says, "Partnership," right?

A Correct.

Q And it says, "Firm up relationship with Peter Woo," correct?

A Correct.

Q And Peter Woo was the chairman of Wharf, correct?

A That's right.

Q And on the Wharf Board of Directors, correct?

A That's right.

Q And it also says, "Finalized memorandum of understanding," correct?

A That's right.

Q And as of that date, the memorandum of understanding wasn't finalized?

A No, we were trying to finalize, as I say on the top left there, "Finalize the MOU, which will preserve UIH's investment rights under the following conditions," and that's what we were trying to do. And some of those conditions differ slightly from our already--investment rights we had, and we were trying to improve upon that position, obviously, in this process. I was just reading from the top left where it says, "Partnership corporate".

Q It's correct, is it not, that the memorandum of understanding was not finalized as of May 25, 1992, correct?

A As I said, that is correct.

Q And--

A I started my answer with that portion. That's correct.

Q I'm sorry, I didn't hear you say--

A Okay.

Q --correct, and I heard you--

A I'll be more--

Q --say other things.

A --clear next time.

Q I missed--

A Okay, no problem.

Q Let's--we're making some progress here in time. We're now going to go into June of 1993. It's right out here. And I'd like you to look at Exhibit 1192, which is Tab 29.

A Okay, I have it.

Q This is another set of your notes, is it not?

A That's correct.

Q And they're dated June 10, 1993, is that right?

A That's correct.

Q I think on the second page of these notes--I'm sorry,

APPENDIX BZ

Excerpt from the Cross-Examination of M. Fries

March 6, 1997

U.S. District Court for the District of Colorado

(Applt. App. 4397:20-4403:15; Transcript 2240:20-2246:15)

Excerpt from the Cross-Examination of M. Fries

March 6, 1997

U.S. District Court for the District of Colorado

(Applt. App. 4397:20-4403:15; Transcript 2240:20-2246:15)

Q Okay. Look at Exhibit No. 244, if you would, please? This is in the defendant's jury book at Tab #8.

A I have it.

Q Do you have that?

A Yes, I do.

Q This is a document entitled Wharf Cable/UIH Key JV Terms, correct?

A Correct.

Q JV stood for joint venture?

A That's correct.

Q Correct?

A That's correct.

Q Not junior varsity; joint venture?

A That's correct.

Q And, you wrote this, did you not?

A Yes, I did.

Q Okay. What I'd like to do is just go quickly through some of the--and, when you wrote this, you were identifying what the key terms would have to be in the future for any sort of joint venture; correct?

A Well, as I testified yesterday, this really was a list of things to think about that I prepared for myself and I'm not sure I shared it with anybody really in anticipation of the meeting.

Q Right. I'm not asking you if you shared it with anybody.

A Okay.

Q You wrote this and you were identifying what you called key joint venture terms; correct?

A Correct.

Q And, one of the key joint venture terms was "partners"; correct?'

A Correct.

Q And, you wrote on partners, "Wharf, UIH, NYNEX, and unidentified media partner"; correct?

A That's what it says. That's correct.

Q Another key joint venture term was "ownership"; was it not?

A That's correct.

Q And, you wrote "Wharf, 60 to 70%; NYNEX, 10 to 20; UIH, 10%; unknown, 10%"; correct?

A Correct.

Q "Investment" was another key joint venture term, correct?

A At that point, yes. Sure.

Q And, you wrote "per approved business plan"; right?

A That's correct.

Q Another key joint venture term was the "business entity"; correct?

A Correct.

Q Which you identified here as "New Co"--I take it a new company to be established?

A Correct.

Q An entity had to be determined and you needed to understand the timing, the structure, legal, and tax issues; correct?

A Correct.

Q All for this new entity for the investment, correct?

A Correct.

Q And then, you had an entry down here called "executive committee" which was another key joint venture term; correct?

A Correct.

Q And, you have written down here over in the right hand side in brackets, "maybe cable tv committee, programming committee, and telecom committee"; correct?

A That's correct.

Q And, telecom means telecommunications/telephone; correct?

A Correct.

Q Look at the next page of your key joint venture terms.

A Okay.

Q Do you have an entry here called "restricted transactions". Do you see that?

A Yes, I do.

Q And then, you write over on the right hand side, "The following transactions will require unanimous consent of the board." Do you see that?

A Yes, I do.

Q And then, you've got a list of things that you're saying to yourself writing this key joint venture terms are what you think ought to require unanimous consent of the board.

Correct?

A Yeah, this is a list of--that's correct. This is a list of ideas of the things we should think about on this subject matter. That's correct.

Q And, these were all things under this restricted transactions that you thought were part of your key joint venture terms to be resolved in the future; correct?

A They were contained in this document called key joint venture terms. They were issues for discussion internally. So, I wouldn't want those to be confused.

Q Let's look at the next page.

A Okay.

Q Key joint venture terms, Page 3, you have an entry called "programming"; correct?

A That's correct.

Q And, programming for the cable project was a key issue, was it not?

A Sure, absolutely.

Q Likewise, you have down here "transfer provisions assignment"; correct?

A Correct.

Q And, over in the right hand side, you write, "UIH can assign its investment rights to a controlled entity, no sale of shares for"-- do you know what that is?

A I think it says 5 years.

Q 5 or does it look like 3? It's hard to tell. Can you tell whether it's 3 or 5?

A No, I cannot.

Q And then, another entry, "Right of first refusal from Years 4 to 6, tagalong rights, shotgun or similar liquidity provision from Year 7 on." Do you see all that?

A Yes, I do.

Q This all goes to the liquidity of the investment that UIH might make; does it not?

A Correct.

Q And, liquidity means how liquid somebody's investment is. It's more liquid if you can get your money out in a year and it's less liquid if you can't get it out for 20 years. Isn't that right?

A That's correct. This is a laundry list of those types of issues to think about. That's correct.

Q These all go to liquidity issues, correct?

A That's correct.

Q Then, you have an entry down here called "conditions precedent"; do you see that?

A Yes, I do.

Q And then, you wrote next to "conditions precedent", "approval of financial and operating plan"; correct?

A Correct.

Q Board consent, correct?

A That's correct.

Q Receipt of cable tv license, correct?

A That's correct.

Q Government/regulatory approvals, correct?

A Correct.

Q And, final documentation; correct?

A Correct.

Q Final documentation means writing up and signing final contracts and agreements, does it not?

A Right, prior to consummation of funding of the investment. That's correct.

Q And, you testified earlier that as of July 13, UIH did not have an option or a right to invest, correct? That was earlier today?

A Correct.

APPENDIX CA

Excerpt from the Cross-Examination of M. Fries

March 6, 1997

(Aplt. App. 4546:18-4550:18;

Transcript 2389:18-2393:18)

Excerpt from the Cross-Examination of M. Fries

March 6, 1997

(Aplt. App. 4546:18-4550:18;
Transcript 2389:18-2393:18)

Q Now, let's look at Exhibit 1153.

A Okay, I have it.

Q Now, 1153--this is not in the jury book--1153 is the same letter we just talked about, is it not?

A That's correct.

Q With a difference I wanted to ask you about.

A Okay.

Q And this is still a letter signed by you, with copies--

A That's correct.

Q --to the same people, correct?

A That's correct.

Q But the attachment to this memorandum of understanding--

A That's--

Q --has got a whole bunch of your notes on it.

A That's correct.

Q Is that correct?

A That's correct.

Q So now just so I'm sure I understand, is this--is this the version that you sent to Mr. Fung that you then did more writing and working on after you sent it to him?

A I'd be happy to explain that to you. This is the version that I sat down with Mr. Fung to discuss. These handwritten notes represent the result of our discussion, and basically his comments on the document that I sent him.

Q Okay. So then what this does is this sort of--if you look at some of your notes, this memorializes what some of the open issues were, correct? For example, on the first page on the left-hand side, it says, "Clarify in detail for scope and purpose"; that was something you intended to do, correct?

A Right. That was his--

Q And--

A That's really just a language change, but yeah, that's correct.

Q Well, I'm sure, but it--

MR. CHASE: Well, you know, Your Honor, I'd appreciate it if he'd let the witness finish his answers.

THE COURT: All right. Sustained.

Q (by Mr. Munson) Go ahead.

A I have no more to say on that.

Q I'm sorry, I thought you were done, I apologize.

A I was just going to characterize the change, but if that's not important, I won't.

Q Well, let's read these.

A Okay.

Q It says, "Clarify in detail for scope and purpose," correct?

A Correct. You see the chart above, it's just we didn't--I didn't accurately reflect the structural issues, and he corrected me on that and said in the next draft, "Fix that up."

Q So it was something that had to be revised, right?

A Sure.

Q And then there's something here that says--just below that it says, "Need to reference something other companies they own"; is that right?

A "All the other companies they own or will own, etc.," and that's really the chart above as well.

Q Uh-huh.

A He was--he was correcting the legal. We hadn't accurately reflected certain of the legal entities, and he was correcting that for us.

Q All right. And then there's the--there's this subject here, Number 2, Acquisition of shares?

A Correct.

Q And you've got a bunch of your markups and write-ups and things on acquisition of shares, do you not?

A I have to read through them. Yeah. We were basically just trying to determine what would trigger the final acquisition of shares or exercise of the option, what events, and I think we came to agreement on that issue. And I'm just writing down here what we wanted the next draft to reflect.

Q And then on page 2, you've got a bunch of additional notes here, correct?

A That's correct.

Q And they include things like it says here, "Timing: Recourse, non-recourse"; correct?

A Correct.

Q And you've got an entry here that says, "New partners," correct?

A That's correct.

Q And then our old favorite, "Corporate governance"; do you see that?

A Yes, I do.

Q And you've got a bunch of marks and suggestions and other things on those issues as well, do you not?

A Not on--well, there might be some on corporate governance on the next page, that's correct.

Q I mean, corporate governance is plainly something that you talked about, right?

A Sure. I mean, our option here was to accept what Hong Kong law provided for us as a minority shareholder or to get a few additional things. And as obviously to the extent that he's negotiating with us in good faith and showing reasonableness and willingness to talk about these issues, other than what Hong Kong law provides, which is specified on page 3, we were trying to get some additional things, that's correct.

Q Sure. So you were--these were issues that were being discussed, right?

A That's correct.

APPENDIX CB

Excerpt from Cross Examination of M. Fries
March 6, 1997
U.S. District Court of the District of Colorado
(Aplt. App. 4358; Transcript 2201)

Excerpt from Cross Examination of M. Fries
March 6, 1997
U.S. District Court of the District of Colorado
(Aplt. App. 4358; Transcript 2201)

A $242,000.

Q Do you own stock in UIH?

A Yes, I do.

Q Do you know how many shares of stock you own?

A Approximately 60,000.

Q And how much is that worth on the market?

A $600,000.

Q Do you have options for other stock?

A Approximately 150,000 with an exercise price at about today's price, so they're not worth that much.

Q I'm going to ask you the next question. In September of 1992, what was--was your estimate of the amount that UIH would be required to invest if it took a 10 per cent interest in cable television in Hong Kong to be 30 to $50 million U.S.?

A To the best of my recollection. I mean, I'd have to look at some notes or files from that period of time. But that seems about right.

Q You don't disagree with that?

A Without further information in front of me, no.

Q As you sit here right now, you don't disagree?

A No.

Q You've never entered into any agreements that involved a 30 to $50 million commitment without a written agreement, have you?

APPENDIX CC

Excerpt from Deposition Testimony of G. Li

March 7, 1997

U.S. District Court of the District of Colorado

(Aplt. App. 4641-4642; Transcript 2484-2485)

Excerpt from Deposition Testimony of G. Li

March 7, 1997

U.S. District Court of the District of Colorado

(Aplt. App. 4641-4642; Transcript 2484-2485)

parties present, and with the jury present, the following proceedings were had:)

MR. WILSON: Your honor, our next witness is Mr. Gonzaga Li who is Wharf's current chairman and chief executive officer, and we've got his picture up on the screen. This is from Trial Exhibit 1409. Mr. Li, obviously, is unavailable. The deposition that we're going to be reading from was taken on May 16, 1995.

THE COURT: Okay. Go ahead, please?

(Whereupon, the deposition of Mr. Gonzaga Li was read by Mr. Wilson and Mr. Boland.)

Whereupon, GONZANGA LI, having been duly sworn, was examined and testified, as follows:

Q "Good Afternoon, Mr. Li. I thank you for coming. Could you tell us, please, the positions you hold with the various Wharf entities and the boards of directors you sit on with the Wharf entities?

A You really want the whole thing? I don't remember.

Q Well, let me go back to the years 1992, 1993, and 1994. Were you a director of Wharf Holdings at that time?

A Yes.

Q Were you a director of any of the subsidiary companies of Wharf Holdings?

A I think -- yes. I believe I am a director of most of the major subsidiaries.

Q This would have been in '92, '93, and '94?

A Yes.

Q Wharf Communications Investment Limited, were you a director of that?

A I can't tell you.

Q Okay. How about Wharf Cable?

A Whether--I believe, I was a chairman of Wharf Cable until recently.

Q Okay. So back in 1992--

A Maybe. I was not involved.

Q You don't remember?

A No, I don't remember.

Q Other than the boards of directors, what executive or managerial positions did you have in the 1992 to 1994 time period with the Wharf entities?

A. In '92 to '94, I was the deputy chairman.

Q Of Wharf Holdings?

A Of Wharf Holdings and chief executive.

Q Well, what about with Wharf Communications? Did you have any executive positions?

A No.

Q Could you tell me generally what the job of chief executive was? What general responsibilities did you have?

APPENDIX CD

Excerpt from Deposition Testimony of G. Li

March 7, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 4646-4647; Transcript 2489-2490)

Excerpt from Deposition Testimony of G. Li

March 7, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 4646-4647; Transcript 2489-2490)

and 2004. These relate to an August 26, 1992 board meeting of Wharf Holdings. Do you remember anything about that meeting?

A I will go by the minutes.

Q You believe something was discussed, sure?

A I believe it. If it is in the minutes, it must have been discussed.

Q My question is do you remember anything about the discussion relating to strategic partners, joint venture partners, UIH, or NYNEX?

A It may have been mentioned, but I don't really remember it.

Q Let me ask you if it says in the minutes and in the agenda that strategic partners are being considered; yes?

A Yes.

Q Would strategic partners for the cable venture have to be approved by Wharf Holdings?

A By its chairman, and whether by the board, I don't know. It depends on what is the capital involvement involved.

Q Could you explain that?

A Well, only major matters are referred to the board for approval.

Q Major capital expenditures?

A Well, there is rarely such expenditure major enough that would require the board's approval. I think the chairman normally would be authorized or have the mandate to approve--

Q Is that--

A --most of the products.

Q So, in this situation, if you were to take on a partner into the cable business who would be co-investing with Wharf, that is not something that would require board approval?

A The board may be informed at one of the regular meetings of what happened.

Q But, they would not have to approve that?

A They would not have to approve. They might accept the report or confirm the report made by the executive who made it.

Q What about any of Wharf's related companies? Would Wharf Communications or Wharf Cable have to approve taking in a partner into the cable venture?

A Can you repeat the question?

Q Sure. Would any of the boards of the Wharf subsidiary like Wharf Communications or Wharf Cable have to approve taking a partner into the cable venture?

A I believe they may have to go through the procedure.

Q Do you know that for sure?

A But, the companies you mentioned, they have a 100% owned subsidiary of Wharf Holdings. It is at their local board level that they may have to get the board approval.

Q And, would the chairman of Wharf Holdings also be the

APPENDIX CE

Excerpt from Deposition Testimony of G. Higgonson

March 7, 1997

U.S. District Court of the District of Colorado

(Aplt. App. 4686-4687; Transcript 2529-2530)

Excerpt from Deposition Testimony of G. Higgonson

March 7, 1997

U.S. District Court of the District of Colorado

(Aplt. App. 4686-4687; Transcript 2529-2530)

television would have been in terms of how best to position the company to win a bid, so that it would be from a government lobbyist, government approach.

Q I see. Is that your handwriting at the bottom of the document?

A That is correct.

Q Can you--I have a little trouble with some of it. If you wouldn't mind reading what it says for the record?

A It's I think 'we discussed last night and I also, as mentioned, discussed at length with the chairman. I agreed basically with the lobbying position and tactics. G. H. Higgonson, 9 of April.'

Q And when you say the chairman in there, would that have been Mr. Woo?

A I believe it would have been.

Q Do you have any recollection whatsoever of discussing this document, or the subject of this document, with the chairman in that general time frame?

A No, I don't.

Q Do you have any recollection of Wharf's strategy with respect to winning the cable bid at that period of time?

A Only to the extent that we--that we wanted to enter the cable T. V. business. We, therefore, wanted to put as good a bid as we could, but beyond that, no.

Q Now, would this have been in the aftermath of the Hong Kong cable consortium problem; is that correct?

A That is correct.

Q Can you describe for us generally what was the Hong Kong cable consortium and what happened to it?

A The Hong Kong Cable Communications, Limited was awarded the franchise in, I believe, about the middle of 1989. I'm speaking from recollection now.

Q Okay. Sure.

A I think you obviously understand who the shareholders were and how the company was structured.

Q Why don't you just give us, for the record, because I can't testify, to the best that you can recall who were the shareholders? How was it structured, if you can recall?

A The shareholders were Wharf Holdings, Limited, as I best recall, and speaking from totally recollection, U. S. West, Sun Hung Kai Properties.

Q Can you spell that for the court reporter?

A Sun Hung Kai, S-u-n H-u-n-g K-a-i Properties, Limited. Coditel, C-o-d-i-t-e-l, a Belgium company, and TVB, Television Broadcast. The company was established and was awarded a franchise to develop and operate cable television in Hong Kong. The company decided in, and I'm guessing now

and I'd like the record to show that I'm guessing, I believe sometime towards the end of 1990, I think, not to proceed with the project, and the company was subsequently wound up.

APPENDIX CF

Excerpt from Redirect Examination of M. Fries

March 7, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 4604-4606; Transcript 2447-2449)

Excerpt from Redirect Examination of M. Fries

March 7, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 4604-4606; Transcript 2447-2449)

Q All right. Now, let me ask you this. Explain to us, if you will, please, the role Ms. Norman played in the negotiation process?

A Well, she was--and, I don't mean this disrespectful because she's a very bright and talented woman. But, in this particular transaction, I used her primarily as a conduit, as someone who was on the ground able to get information and deliver information. In terms of her role in the substantive negotiations or discussions with Wharf, she really played little to none. And, I'm sure she'll testify to the same thing.

Q Now, I'd ask you to look over at Exhibit 493. This is a document we've looked at. This is a September 9, 1993 draft of a letter of intent that has a lot of your handwriting on it. What I'd like you to do--we're not going to go back through all your handwriting, but I'd like you to go back over to Paragraph 12 where it talks about a shareholder's agreement at the end of the letter of intent.

A Okay.

Q Do you see that?

A Yes, I do.

Q All right. Now, that particular provision does not contain an date for a shareholder's agreement to be done, does it?

A No, it does not.

Q Did previous drafts have a date?

A Each and every one.

Q And, what was the significance, if any, of this one not having a date?

A This was the point in time where the filing strategy, as it's been described, was changing. Everything we were doing up to this point was done in reliance upon both a promise and an expectation of signing agreements and being given this right to invest prior to the bid date. That's why all of the letters of intent that I think Mr. Munson pointed out earlier had a September 25 date, and it said "a legally binding shareholder's agreement will be signed before September 25." This was the first draft that didn't contain a date, and it gave me and others cause for a concern in principle, as the source of a lot of my notes and particularly the notes referencing option and binding and things like that.

Q Explain that if you will?

A We were uncomfortable that at this late date the strategy was changing. All of our efforts up to this point being directed towards signing a document like this and then the date was changed or not referenced. It was clearly indicated that the date might be sometime after the license award or license application was submitted. And that, as I think I testified two days ago, was unacceptable to us because that was really what we had to offer. One of the key things we had to offer was being part of the bid and providing our credibility and, more importantly, continuing to work on the project through the process of license application and bid implementation.

Q Did you raise this subject with Mr. Fung or anyone else?

A Sure.

MR. MUNSON: Objection, Your Honor; leading.

THE COURT: Sustained.

Q (by Mr. Chase) Did you discuss this with anyone?

A Yes, I discussed it with Mr. Fung. I believe, his lawyers were there, and we discussed it in a context of all of my comments on this particular letter of intent.

Q Now, let me ask you--

A I believe, there was--sorry, go ahead?

Q No, go ahead ; I'm sorry.

A No, I was trying to--there's so many dates. I believe, it was at or--you know, within a day or two of the chart where we started talking about the TCA and the ownership. So, this is all happening in the same two or three day period.

Q All right. Let me take you to the TCA now.

A Okay.

Q Let me ask you first to look at--first of all, look at Exhibit 517 which was a UIH draft of a TCA. You were asked about this on cross; do you recall that?

APPENDIX CG

Excerpt from Redirect Examination of M. Fries

March 7, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 4608-4614; Transcript 2451-2457)

Excerpt from Redirect Examination of M. Fries

March 7, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 4608-4614; Transcript 2451-2457)

Q Why would you have management agreements from other transactions?

A Because there is not a--we do not invest in projects like this unless we have the distinct ability and opportunity to provide our expertise. We are active investors; not passive investors. I think that's probably been talked about quite a bit in this trial, thus far.

Q So, those other TCAs would relate to other investments?

A Correct.

Q All right. Now, I'm going to show you the Technical Cooperation Agreement and this one is in your book.

A Okay.

Q And, that's Exhibit 531. It's the Technical Cooperation Agreement itself.

A And, I'm just going to--I'm going to be putting stuff up on the board here and I don't know that it's necessary for anybody to go looking for it. I'm going to ask you about certain provisions in detail on this thing because Mr. Munson did yesterday.

A Okay.

Q And, I want to get this straightened out.

A All right.

Q All right. Point 1, who are the parties to the TCA and why?

A The parties to the TCA are UIH which you see on the left there and Wharf Cable which is the box that is second to the bottom.

Q All right.

A The reason for that--there's several reasons for that. The first reason is that Wharf Cable is the entity that would actually be the operating company; the company that would hold the license, build the network, operate the business. So, clearly, the entity that--the company that requires the expertise is a company that's operating the business. The box directly above that is the box where the shareholders have their ownership stake.

Q The CNCL box?

A Correct. And, CNCL would own 100 % of Wharf Cable.

Q And, who would be the shareholders of CNCL? Can you see that from here?

A Yeah. It says UIH and Wharf.

Q Wharf Communications?

A Right.

Q Okay. And so, they would own CNCL?

A Correct.

Q And then, CNCL would own Cable?

A Correct.

Q And, the TCA would be with Cable, not with CNCL or WCIL?

A In fact, it was with Cable. The other reason for that was that we had--as I think I testified a couple of days ago, we had agreements and understandings with WCIL relating to CNCL. And, in no way did we want this document to prejudice those rights or in any way have an effect on those rights. I'm sure you're going to ask me about that.

Q Well, we've talked about that, but is that why the draft was changed as to which party you were dealing with?

A That was one of the principal reasons, yes.

Q All right. Now, let me go back to Exhibit 531.

A Okay, I have it.

Q And, first of all, let me ask you to look at Paragraph 2.

A Okay.

Q Now, Paragraph 2 says, "Agreement condition. This agreement, other than this clause and Clauses 10, 12, 13, 14, and 15, are conditional upon the award by the government of Hong Kong of a subscription television license to the company or to one of the company's subsidiaries. Do you see that?

A Yes, I do.

Q All right. I want you to forget for a minute all the testimony about why you entered into this and what you understood it to be and I just want to take this agreement at face value.

A Okay.

Q Okay?

A Sure.

Q Now, taking that language, Paragraph 2, what does that mean about UIH's obligation to provide services?

A It means that there is no obligation to provide any services until such time that a license is issued to Wharf Cable.

Q And, that would be then June 1993?

A Correct.

Q Now, let me take you then to--

A Nor would NYNEX who signed a similar agreement have any rights--any obligations to provide any services until such date.

Q Let me take you to Paragraph 7 because you were asked about this paragraph yesterday.

A Okay.

Q Now, this is one where Mr. Munson had you read down at the bottom of Paragraph 7. It says, "And, nothing contained in this agreement or in the relationship of the company"--and, the company being who?

A Wharf Cable.

Q "And UIH shall constitute or be construed to be or to create a partnership or joint venture between the company" --who is the company?

A Wharf Cable.

Q "And UIH." Do you see that?

A Yes, I do.

Q Did you have any concern that this particular provision interfered with your relationship with Wharf Communications or Wharf Holdings?

MR. MUNSON: Objection, Your Honor; leading and suggestive. He's giving the witness the answer to the question.

MR. CHASE: I'll ask it differently.

THE COURT: All right. Sustained.

Q (by Mr. Chase) Did this raise any concerns for you?

A No.

Q Why not?

A Because the company in this case is the--the company almost near the bottom of that chart called Wharf Cable. And, all of our understandings with respect to promises made, ownership, and investment rights were with the Wharf companies at the top and CNCL. This is not slight of hand. This was purposeful and discussed and very well understood by all parties.

Q All right. Now, I want you to do one more thing. Look back to that Section 2 you just read about the agreement being conditional upon license award. Do you see that?

A Yes.

Q And, it pertained to all clauses except for the ones specified in that section, right?

A Correct.

Q Now, this Section 7 that I just read, is that one of the clauses that is conditional until license--that doesn't kick in until license award?

MR. MUNSON: Objection, Your Honor; leading. The document speaks for itself.

THE COURT: Overruled.

THE WITNESS: Yes, it is.

Q (by Mr. Chase) Now, let me take you to Paragraph 14.9. You were asked about that yesterday.

A Okay.

Q 14.9 says, "This agreement may not be released, discharged, supplemented, interpreted, amended, varied or modified in any manner except by an instrument in writing." Do you see that?

A Yes.

Q Did you have any concern regarding the impact of that paragraph on the October 8 agreement?

A No.

Q Why not?

A Well, first, it's relating to this agreement which is an agreement between us and Wharf Cable and we weren't attempting to vary or amend this agreement in any way, shape, or form in that October 8 meeting. This was an agreement between UIH and Wharf Cable for the provision of services at the point in time that we became shareholders.

Q And, your agreement on October 8 was with who and over what?

A That was the agreement made between Mark Schneider, Bill Elsner, and Stephen Ng with respect to our right to invest in CNCL at the 10 % level.

Q Does that relate in any way to the TCA?

A No.

Q All right. Now, I'd like you to look at Exhibit 556. Exhibit 556 was shown to you--

A I think this book has been raided. It's not here.

Q Is the defendant's book there? Did they leave that up there?

A I handed it back to them.

Q I'll tell you what; I'm just going to flash it on the screen. This is the provision from the actual bid that was shown you by Mr. Munson yesterday from 566; ownership structure, do you see that?

A Yes, I do.

Q And, do you recall that language from the bid?

A Yes, I do.

Q Is that the language you expected to see in the bid?

A No, it's not.

MR. MUNSON: Objection, Your Honor; leading.

THE COURT: Sustained.

Q (by Mr. Chase) What language did you expect to see in

APPENDIX CH

Excerpt from Deposition Testimony of Q. Law

March 7, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 4680-4681; Transcript 2523-2524)

Excerpt from Deposition Testimony of Q. Law

March 7, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 4680-4681; Transcript 2523-2524)

Q "Is that no?

A No.

Q Yes, your answer was no?

A No, I was not aware. Nobody told me about the details of the meeting or the decision or what the decision was at that meeting.

Q Did Mr. Ng ever report to you concerning NYNEX's participation in the cable franchise?

A Can I hear that back, please?

Q I'll rephrase that. Did Mr. Ng ever refer to you at any time concerning NYNEX's participation in the cable franchise?

A As far as I can remember, he reported that at one occasion, NYNEX's position was not certain.

Q Do you recall when he reported that NYNEX's participation was not certain?

A Sorry.

Q Do you recall discussion when he reported to you that NYNEX's participation--do you recall when he reported to you that NYNEX's participation in the cable franchise was not certain?

A I don't recall exactly when.

Q Do you recall a year?

A A year from now?

Q I'm sorry. A year that he would have reported to you; 1992, '93, '95?

A Must be over one year.

Q At least a year ago, that's when he reported that to you?

A Yes.

Q Had Mr. Ng ever reported to you as to whether NYNEX's participation in the cable franchise would in any way affect UIH's participation in the cable franchise?"

MR. WILSON: Let me read that again. I bobbled it.

Q "Did Mr. Ng ever report to you as to whether NYNEX's participation in the cable franchise would in any way affect UIH's participation in the cable franchise?

A I don't recall he has reported that sort of interlink in this situation."

MR. WILSON: No further questions of Mr. Law. Moving right along.

I'm looking for a picture of Mr. Higgonson, so I'm going to use another document, and I'm going to--Mr. Higgonson is this gentleman. He was the executive director of Wharf and we're going to be reading from his deposition which was taken

the same day as Mr. Law's, May 17, 1995, but in the afternoon beginning at 1: 55 p.m.

GERALD HIGGONSON

Gerald Higgonson having been first duly sworn, was examined and testified as follows by deposition:

(Whereupon, the deposition of Gerald Higgonson was read

APPENDIX CI

Excerpt from Redirect Examination of M. Fries

March 7, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 4599-4600; Transcript 2442-2443)

Excerpt from Redirect Examination of M. Fries

March 7, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 4599-4600; Transcript 2442-2443)

party agreement from mid-september 1992.

A I don't have a--I have a 470. I don't have a 472.

Q Are you sure?

A Yeah.

Q Well, I don't know where these went. You had them before.

A Is the document dated September 16--or June 16?

Q Yes, do you have that now?

A I have a June 16.

Q Do you have that?

A No, I don't have this one.

Q Oh, Mr. Gilmore is getting that. I'll tell you what. I can move this along. I'm going to let you look at mine, Mr. Fries.

A Okay.

Q This is Exhibit 472. It's a September draft of a shareholder's agreement. Mr. Fries, are there any conditions contained in that draft?

A To the best of my recollection, no. It was--as I think I've testified and probably others, it was important to Wharf that there be no conditions in this draft.

Q Why?

A Well, as I'm sure was clear in yesterday's testimony, everything we were doing from August to September was in an effort to get a legally binding shareholder's agreement signed prior to the bid date. All of the drafts, all of the letters of intent were all working towards that goal. I think, the date was September 25. Therefore, the document we were going to submit to the Government as part of the bid package couldn't have any conditions to it. And, that was Wharf's request, as much as anybody's. They wanted to make sure that the Government knew that the team they had put together was committed on the dotted line. And, that was--again, that was their request.

Q Was--

A This draft didn't have any conditions with respect to people's involvement or commitment.

Q And, that's as of September 16, 1992?

A That's correct.

Q Was that acceptable to UIH?

A Sure. I mean, we expected--it was acceptable for one particular reason; that it had a provision in there, as we've talked before, called dilution where if you didn't fund, you were diluted. And, we fully expected to raise our capital at that point in time and to be--and, if we were unable to do that, that was our risk and we were willing to take that risk.

Q So, are you saying you had dilution in lieu of conditions, instead of conditions?

A That was--yes.

APPENDIX CJ

Excerpt from Direct Examination of B. Williams

March 10, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 4841-4848; Transcript 2684-2691)

Excerpt from Direct Examination of B. Williams

March 10, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 4841-4848; Transcript 2684-2691)

A There was Wharf Cable and their telecom company was New T&T.

Q And, did you have any role with respect to New T&T as a Wharf Cable employee?

A No, I didn't.

Q All right. I want to switch to what will be a final topic here. I'd just like to talk to you about leaving the employ of UIH and going over to the employ of Wharf Cable. This would have been in the 1993 time frame, right?

A Yes.

Q Why don't you tell me how that happened and how you got from Uih over to Wharf Cable?

A Basically we were being--Bill Pittman who I reported to told me that Wharf Cable sort of liked what I was doing and would like to approach us, myself and Steve Moss, about becoming employees. There was some dissatisfaction with UIH employees at that time, both myself and Steve Moss and I believe Mr. Pittman, as well. And, I believe I said something like, well, I would entertain talking to them about becoming an employee.

Q Prior to being approached by Mr. Pittman, what thought had you had, if any, about going over to work for Wharf Cable?

A I'd have to say that I had some reservations because of the size of the project, the build rate, et cetera. But, I also looked at it as sort of a feather in my career cap to take a project on like that.

Q And, what did you tell Mr. Pittman after he approached you about going to Wharf Cable?

A I believe, I told him that again I would entertain the idea. If they wanted to make me an offer, then I would listen to that offer.

Q And, how did he react?

A He basically said, okay, fine, I'll see if I can facilitate that.

Q What happened next?

A Sometime after that, I was approached by Dave Keefe who was chief--

Q Who was Dave Keefe?

A Dave Keefe was chief operating officer of Wharf Cable.

Q And, how did he get to Wharf Cable?

A He was one of the candidates that had come through for interviews on COOs, chief operating officers. I believe, there were four or five of them that had come through Hong Kong to interview.

Q Come through where from where?

A From the United States. I think all of them were from the United States.

Q And, how was Mr. Keefe identified?

A He came through the process and again we--all of us at UIH interviewed all of potential COO candidates or at least met with them. I can't say we interviewed them; we met with them. We were asked our opinions of those. It was announced at one time that Dave Keefe had been appointed COO.

Q And, this would have been approximately when?

A I don't recall.

Q If you don't have a recollection, that's fine. All right. So, you've got Mr. Keefe, Mr. Gregory, Mr. Taylor. Those are people we've talked about before, and they're all taking operational positions at Wharf Cable. Right?

A Yes.

Q Mr. Keefe's title was?

A Chief operating officer.

Q And, what did he do?

A He was basically responsible for the day-to-day operation of the cable system itself.

Q And, Mr. Gregory's title was?

A Construction manager.

Q And, what did he do?

A He was responsible for the installation and the construction of the cable network.

Q And, ultimately, you joined Wharf Cable, as we've already talked about, and what did you do?

A I was the manager of engineering.

Q And, what were your duties as an employee of Wharf Cable?

A Basically to make sure that the network worked as it was designed to work and also I was responsible for the service technicians to do service work and maintenance work on the network.

Q And, Mr. Moss ultimately joined Wharf Cable, as well?

A Yes, he did.

Q What did he do?

A I think he was chief financial officer.

Q Okay. And, what were his responsibilities?

A Basically to watch the finance and develop budgets for Wharf Cable.

Q And, while you were an employee of Wharf Cable, did you supervise anybody or did you work on your own?

A I supervised people.

Q Approximately, how many people did you supervise?

A Indirectly, approximately 230 some people.

Q And, did George Taylor supervise people or did he work on his own?

A He supervised, as well.

Q Do you recall approximately how many people he supervised?

A I believe, 20 or so.

Q Okay. How about Mr. Gregory? Did he supervise people or did he work on his own?

A No, he supervised, as well.

Q And, approximately, how many people did he supervise?

A I believe his was around 250 or so.

Q And, did Mr. Keefe supervise people or did he work on his own, as well?

A He supervised, as well.

Q And, how many people did he supervise, approximately?

A I guess, indirectly, he would supervise the entire Wharf Group at that time and that was over 1,000 people.

Q Okay. I want to talk about the impact that this group of people you've identified--Mr. Keefe, Mr. Taylor, Mr. Gregory, yourself--and there was a gentleman who we talked about earlier. I'm spacing on his name. He's the other guy that you helped recruit.

A Eric Buckley.

Q Mr. Buckley's title was?

A Design manager.

Q And, did he supervise people or did he work on his own?

A He supervised, as well.

Q All right. Do you recall approximately how many people he supervised?

A I think around 20.

Q All right. I'd like to talk to you generally about the impact that Mr. Keefe, Mr. Gregory, Mr. Taylor, yourself, and Mr. Buckley had on the Wharf Cable project. Do you have a view on that?

A I believe, we had a high impact on the network. It was he--in the industry, it was the fastest build that had ever been done in the industry for the number of passings that were there.

Q What do you mean by the fastest build?

A Initially, the bid was for us to build a network in three years--over a three year period. Peter Woo came to us at one time and said, no, no, no, that's not going to do. Can you do it in 24 months? We all sort of swallowed hard and said, well, we'll give it a shot. And then, sometime I believe in July of '93, we were going through a budgeting process trying to work through an operating budget. Stephen Ng came in and basically said I've just talked to Peter. We're a little bit worried about the government. We have certain milestones that we have to reach. Can you do this in 18 months? And, we basically all sort of looked at each other and went--again, we'll give it a shot and see what happens.

Q And, how did you refer to yourself as a group, if at all?

A There was a standing joke that we were the pros from Dover.

Q What do you mean by the pros from Dover?

A It comes from the movie MASH that we were the pros. We considered ourselves the hired guns to come in and get it done because we had the knowledge, the past experience, and the expertise to get it done.

Q Did you get it done?

A We missed our target. I believe, we had 920,000 on the target date that we were supposed to have 1,000,000. So, we considered that to be pretty close.

Q And, how did that compare in terms of home passed and speed of build based on what previously had been done in the industry?

A As far as I know, that kind of build rate has never been done anywhere that I know of.

Q Mr. Williams, let me just talk to my co-counsel here for a minute.

(Pause.)

MR. WILSON: All right. I'm going to change locations here and use a medium I haven't used before which is Mr. Chart.

Q (by Mr. Wilson) All right. Mr. Williams, why don't you come on down here and we'll do a little time line just so the

record is absolutely clear on when you were doing various things. You became acting chief engineer of Wharf Cable on UIH's payroll approximately when?

A I believe, the second or third week of October.

Q Okay. So, that's October 1992?

A Yes.

Q And, you continued as acting chief engineer of Wharf Cable on UIH's payroll until?

A The end of March, 1993.

Q All right. So, roughly, April 1, 1993; right?

A (No audible response.)

Q Then, from approximately April 1 of 1993 to, I think you said, June of 1995--May/June, is that correct?

A (Inaudible).

Q Okay. May of 1995, you were a Wharf Cable employee, right?

A Yes, I was.

Q And then, from May of 1995 to the present, you're a UIH employee again?

A Yes, I am.

Q All right. So, we have UIH employee as Wharf Cable's acting chief engineer. And then, your title as a Wharf Cable employee was--

A Engineering manager.

Q And, when we're talking about this big chart back over here, Exhibit 1602, the advice and recommendations that you were making to Wharf on those topics were made during which period of time?

A The October '92 to April of '93.

Q That's this period when you were a UIH employee acting

APPENDIX CK

Excerpt from Direct Examination of B. Williams

March 10, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 4776-4778; Transcript 2619-2621)

Excerpt from Direct Examination of B. Williams

March 10, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 4776-4778; Transcript 2619-2621)

Q And can you give me some ideas of who you consulted with during that period?

A At that time, I consulted with U. S. West, PacTel and UIH.

Q And did you ultimately become an employee of UIH?

A Yes, I did.

Q When was that, approximately?

A I believe 1991.

Q All right. I'm going to jump you forward in time a little bit to October, 1992. And I'm going to show you something, I don't believe I have this in front of you, but I'm just going to put it up on the screen over to your right there, and this is Exhibit 685. And we turn to the second page of that document, and it says "BLW appointed acting chief engineer."

First of all, who is BLW?

A I believe I am.

Q Those are your initials?

A Those are my initials.

Q And this is acting chief engineer for whom?

A That would be for Wharf Cable.

Q And who was your employer at the time that you became acting chief engineer of Wharf Cable?

A UIH.

Q And for what period of time did you serve as acting chief engineer for Wharf Cable while you were a UIH employee?

A Until I was actually employed by Wharf Cable, which would have been in April of 1993.

Q So from October of 1992 to April, 1993, your employer was UIH?

A Yes, it was.

Q All right. And for the period of time that you were acting chief engineer for Wharf Cable, who paid your salary?

A UIH.

Q And would that be during the whole of the period of time, or just part of that period?

A That would have been the whole period of time.

Q Why don't you tell us first how it is you became acting chief engineer of Wharf Cable?

A Basically, I was sitting in the cubicle that was provided by Wharf Cable in Hong Kong, and a gentleman by the name of Bill Pittman, who I reported to, came to me in the cubicle and said, "I just had a meeting with Stephen Ng, that you're now the acting chief engineer for Wharf Cable."

Q And how did you respond?

A I think I said, "You're kidding." But I took it in stride.

Q In relation to the franchise application that was submitted by Wharf Cable, when was this conversation with Mr. Pittman?

A I believe a month after that, or maybe less than a month.

Q So roughly in the October, 1992 time frame?

A Yes.

Q What did you understand your duties to be as acting chief engineer for Wharf Cable?

A I understood it to move forward the process of getting the network planned and implemented according to the bid and/or change the bid process if we had to--not the bid, but the bid document that was submitted to the government.

Q All right. I want to come back and talk about with more specificity what you did as acting chief engineer for Wharf Cable, but first of all, I'd like to go back in time to September, 1992, or thereabouts. Prior to being appointed acting chief engineer for Wharf Cable, what, if any, work had you done in connection with the Wharf cable project?

A Basically, attended meetings, discussed the bid documents with the British consultants that were there, plus other people that were Wharf Cable employees, dealt with--tried to figure out capital costs that were being submitted, just sort of an overview and, you know, voicing my opinion.

Q And this would have been in what time frame, please?

A August through September.

Q All right. Did you do all the work that you did in Hong Kong, or did you do work elsewhere in connection with the

APPENDIX CL

Excerpt from Direct Examination of B. Williams

March 10, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 4791-4832; Transcript 2634-2675)

Excerpt from Direct Examination of B. Williams
March 10, 1997
U.S. District Court for the District of Colorado
(Aplt. App. 4791-4832; Transcript 2634-2675)

that digression there talking about all this hardware and equipment, you were talking about Scientific Atlanta and amplifiers. What was--what did you do with Scientific Atlanta concerning these amplifiers and distribution equipment?

A Basically, myself and a gentleman called George Taylor, who was a consultant with Wharf Cable, George had a relationship with Scientific Atlanta since he had used their equipment over many, many years, and so he actually knew people personally within the company, and we started to discuss contract terms and basically--and also delivery terms with Scientific Atlanta.

Q And who was your employer at the time that you were doing this?

A UIH.

Q And this would have been approximately when?

A Probably started in November or December, January.

Q And continuing for what period of time?

A Until they signed the contract.

Q All right. Let's talk about the topic of recruiting people. What, if any, involvement did you have in recruiting employees to come to work at Wharf?

A Again, a gentleman by the name of George Taylor, who was, one, a good friend, and also a very good colleague, I asked him or told him about the project, that we, being UIH at that time, was potentially looking for someone to help augment some of the work that we were doing at Wharf Cable, and I think he came in for an interview. Subsequently, he also talked to a gentleman by the name of Ernie Gregory, who ended up being the construction manager for Wharf Cable. I also talked to Ernie because I used to work with Ernie at ATC as well.

Q And when you were talking to Mr. Taylor and Mr. Gregory about coming to work at Wharf Cable, who was your employer?

A UIH.

Q And this would have been during what period of time?

A I believe I started to talk to George Taylor sometime in August or September.

Q Of what year?

A 1992.

Q All right. And when did you have these conversations with Mr. Gregory?

A I think my first conversation with Mr. Gregory was over the phone I believe after probably George had talked to him, and that would have been September or October.

Q What, if any, position did Mr. Taylor take with Wharf Cable?

A Mr. Taylor ultimately took a position I believe as network operations manager.

Q And at that point in time, he was a Wharf Cable employee?

A Yes, he was.

Q All right. What position, if any, did Mr. Gregory take as an employee of Wharf Cable?

A Construction manager.

Q And at that time, he became employed by Wharf Cable?

A Yes, he did.

Q Did you have any other involvement in recruiting?

A There was a gentleman by the name of Eric Buckley, and Eric--I believe George Taylor talked to him first, and then George and I talked about bringing Eric Buckley on and he finally came on as the design manager for Wharf Cable.

Q And when he came on as the design manager, was this before or after you had joined Wharf Cable as their employee?

A I believe I was still a UIH employee.

Q Okay. I want to switch over here to some--talk about in more detail some of the stuff you did while you were acting chief engineer of Wharf Cable, and I'm going to direct you to the topic of fiber optics.

First of all, at the time that you began working on the Wharf Cable project, what was your understanding, if any, of what Wharf's plan was for fiber optics?

A At the time that I looked at the bid document, they had basically developed a Scientific Atlanta approach, since Scientific Atlanta was helping them in some of those areas, and they were deploying from the headend a network that was super-trunking to receiving points of approximately 10,000 homes. And from there--

Q Okay, let's stop right there because my eyes glazed over when I heard that one. Super-trunking, what is that?

A Basically, it's an express way of getting signals without using amplifiers, either optical amplifiers or RF amplifiers, and not tapping off of that to serve subscribers to get to a point. And basically what it does is it gives you the ability to get to--from Point A to Point B with the least amount of degradation of the signal as you possibly can.

Q What do you mean by degradation of the signal?

A In layman's terms, the best signal qualities or the best picture that you could possibly give to the subscriber.

Q All right. And their plan was to super trunk to 10,000 homes per node?

A Yes.

Q And what did you think about that?

A Well, at the time, the industry had started to look at smaller node sizes. Bouncing around in the industry were numbers like 5,000 homes per node, 2,500 homes per node, 2,000 homes per node, and at that point in time, I thought that 10,000 homes per node was not a very good idea for the supposedly the--which was going to be the world's largest and highest tech cable system.

Q Why did you think that Wharf's plan to use 10,000 homes per node was a bad idea?

A From an operational standpoint, when you go to 10,000 home nodes, you have a lot more electronics off of that node going out to serve the subscriber. So, again, from an operational standpoint, that would lead to potentially more problems, more failures out in the field where you would have to send service techs to go and fix that.

Q How, if at all, did the--I'll come back to that in a minute. Did you have a recommendation as to what Wharf ought to do instead of 10,000 homes per node?

A I believe I recommended either 5,000 or 2,500 homes per node at that time.

Q All right. How, if at all, would going to a smaller number of homes per node affect the economics of the project?

A Basically, it would have been probably initially more expensive because you are actually using more receivers, optical receivers, at that time. And at that time, optical receivers were more costly than RF electronics or amplifiers. But in the long run, we were trying to plan for a network that gave us the ability to have the least amount of service calls or problems out in the field. So by going to a smaller node size or receiver size, they actually had more--or less, I'm sorry, electronics in the field, so therefore, potentially you had the ability in the long run to have less service calls, less trouble in the network.

Q What, if any, analysis did you do on how--on the impact of node size to cost savings?

A I believe I supplied a gentleman by the name of Steve Moss, who was our finance guy, or financial guy, numbers for cost of the receiving nodes, the additional fiber that may be needed to get to that point, and also the reduction of RF electronics. And he, therefore, plugged it into the financial model.

Q And what, if anything, did he conclude after plugging that in?

A That basically the financial model really didn't take a look at operating cost over, you know, a certain period of time, ten years, et cetera. But I think we came up with the fact that instead of super-trunking and doing it the way it was, we probably in the long run would have saved some money.

Q As of the time that you left the employ of Wharf--pardon me--yes, as of the time you left the employ of Wharf Cable, what kind of fiber optic super-trunking system was Wharf using in terms of node size?

A Difficult question because we're using an average, and Wharf Cable is now using an average of node sizes. There is what I guess we could consider a super trunk type of ring that was developed in Hong Kong where it goes through the MTR, which is the mass transit system subway underground, and then comes out at every station within Hong Kong. From there, the fiber is distributed to receiving nodes.

The idea was that each building or each housing authority building or housing estate which had a number of buildings had microwave receivers at those buildings, at the top of those buildings. The idea in the plan was to take the fiber and replace the microwave receiver with an optical receiver. And when we ran the numbers for what we thought the total number of

microwave receivers were, divided by the total number of passings that were in Hong Kong, the average came out to about 1,200 homes passed.

Q All right. So let's just put this in context. Wharf initially was recommending 10,000 homes per node?

A Right.

Q Your recommendation was to do--

A Roughly either 5,000 or 2,500.

Q And what is actually doing?

A They're actually replacing the receiver node, and on an average, that would come out to approximately 1,200. Now, there are some receivers that serve, because of the microwave system, 4,000 homes. But on an average, it comes out to--and there are some that serve even more than that. But on average, it would come out to approximately 1,200.

Q All right, let's switch to a--stay on the topic of fiber optics, but switch to I guess a larger issue here. What's a YAG?

A A YAG is a high powered laser that's used in the industry.

Q All right. Did you have a recommendation as to a--did your fiber optic plan employ some kind of particular laser configuration?

MR. TULLY: Your Honor, I'm sorry to interrupt, but I'd appreciate it if Mr. Wilson would let the witness testify and not lead.

THE COURT: Sustained.

Q (by Mr. Wilson) What, if any, laser configuration did your fiber optic system deploy?

A The fiber optic system that was used in Hong Kong was a YAG DFB type configuration.

Q All right. Tell us what a YAG DFB configuration is.

A A YAG is a high powered laser that gives you more power, therefore, gives you the ability to do two things, depending on the way the design is worked. YAG will give you more power, so if you have to go through a network of splitters that basically gives you a number of different outputs to go to different places, that gives you the ability to go through more splitters than a standard DFB, because a DFB is a distributed feedback laser that has a lower power.

So what we were trying to do with the YAG DFB design was basically save money. YAGs at that time were approximately $50,000, and we looked at the overall plan of trying to do the network just using DFBs, and at that time, we came up with the recommendation and the design that using I believe, if I remember right, eight YAGs actually saved money and gave us a different way of splitting the network to actually serve all the nodes that were going to be out in the field.

Q What was the state of the art in the industry at the time that you made these recommendations?

A State of the art seems to change in the cable industry on a weekly basis. So at that time, YAGs were being deployed in the field, and we considered the product that we used was the most cost effective from a design standpoint that we could use. So state of the art, there weren't a YAGs being used in the CATV industry. That's probably because at that point, the industry had not deployed very much fiber optic.

Q All right, let's switch in time to--stay on fiber optics, switch in time to your role in the--as an employee of Wharf Cable. What, if any, role did you have with respect to YAG DFB issues as a Wharf Cable employee?

A It had come to my attention while I was a Wharf Cable employee the supplier of the YAGs, a company by the name of Antech, who's here out of Denver, one of their tech reps. came to me and said that they had done tests, and I believe it was with Time Warner at that time, that they could cascade YAGs, so you would have what's called a YAG, YAG, DFB type configuration. And so we walked through that scenario, and at that time, I believe that sometime in that time frame, within the next couple months, we actually initiated the purchase requisition for the additional YAGs.

Q All right. And sticking with another larger issue here, what, if any, role did you play in the design of the number of strands that were to go in the fiber optic network?

A I came back to Denver at one time and sat down with some of the engineers in the company again called Antech here in Denver, and sat down with them and showed them the MTR plan and what we thought we needed to do there. And they came back with a design that showed that there were 96 fibers needed in the MTR--or within the MTR in order to implement the plan that we were thinking of.

Q Okay. What is, in fiber optic parlance, what does up and down mean?

A That's not really in fiber optics; that's in the MTR.

Q Okay.

A The MTR has an up track and a down track, so it's basically a circle, and so they were deploying--we were deploying--we had to deploy, basically, the fiber in both the up track and the down track so we had a ring type configuration.

Q And what was your plan as to the number of fibers up and down?

A It was 96 on both.

Q Okay. So 96 up and 96 down?

A Yes.

Q Did Wharf deploy that configuration?

A We found out later after the fact that I believe there were 48. They basically took the split, did not look at 96 on up and down, and they somehow split that and there were only, I believe, 48 up and 48 down.

Q Okay. Let's switch to another topic here, which is D-3 wiring. All right? And let's talk about D-3 wiring. First of all, what is it?

A D-3 wiring is a European use of the word that we call subscriber drops here in the United States.

Q All right. What was Wharf's original plan as to D-3 wiring?

A Basically that everybody in Hong Kong got a drop at the start of the network.

Q Okay. Were they using old wiring, building new wiring, what?

A The initial plan was, because of the fast deployment of the network, they wanted to use all existing wiring.

Q All right, I've got an exhibit here that I have borrowed from Mr. Tully, and this is 1716-P admitted into evidence here, and I'll put this up on the T.V. screen here.

Why don't you explain to us what this picture is, with the focus on the D-3 wiring issue.

A Basically, what we're looking at here is the one on the right is the old CABD system.

Q That's this thing here?

A Yes. That would be either the Housing Authority's wiring or that was a private building, it might be the private building owner's wiring as well. The one on the left is Wharf Cable. That is a tap there, and I believe it shows that there are no subscribers. The two wires coming into that is what we would call D-2 or the distribution.

Q Okay. So over on this chart here, the tap, that's this thing?

A Yes.

Q And could you point--well, I guess I can, I have to point. And this is the tap here on this page?

A That's the Wharf Cable tap, yes.

Q All right, very good. And Wharf's original plan was what with respect to reusing the existing wiring?

A Again, it was, because the build rate from the government was considered to be very fast, they were considering using all the existing wiring in the buildings.

Q And what, if anything, was your reaction to that?

A We reacted very objectively that they should not, because we had taken a look at some of the buildings that had wiring in it, both public housing and some private housing, and if you can look at the tap there for the CABD, it's what we call a saddle and clamp type arrangement, and that has the potential ability of leaking signals both in and leaking signals out.

Q All right, let me stop you right there. First of all, when you said we made this recommendation, who's we?

A UIH.

Q And when was this recommendation made?

A I believe sometime before the bid went in, and then we sort of reinforced that as we went forward.

Q All right. And this is back in the fall of 1992?

A Yes.

Q All right. And you started talking about signal leakage from the existing wiring. What do you mean by that?

A Well, as you send signals down the cable system, depending on the quality of the craftsmanship that you use, the contractors or your own in-house people, a cable system has the ability to leak signals out from around connectors, taps, amplifiers, et cetera, and it also has the ability to have signals

come in from different other types of transmitters like paging companies, radios and other things
that would be used to broadcast signals over the air.

Q All right, let's talk about the signals coming in. Is there a word for that in the industry?

A It's called ingress.

Q Well, is there a problem with ingress, and if so, what is it?

A Again, ingress would bring signals into the cable system that would have the potential of disrupting the picture quality the subscriber would see.

Q Why is that a problem?

A Well, if the subscriber--if you have ingress coming in and it's disrupting the picture that you're watching, the subscriber would probably call you for a service call. If you couldn't fix that problem immediately, which potentially you couldn't, they may become non-subscribers.

Q Okay. And what's the problem with signal leakage out?

A Signal leakage out, depending on where you are in the world, a lot of countries have regulations that if you leak signals out and those signals disrupt other broadcasters or government agencies, that you can be fined and/or, again, depending on where you are in the world, you could be fined, you could be asked to turn that channel off, you could be asked to turn your own system off until you fix that. Again, it depends on the country and the government's regulations.

Q Okay. In light of these signal leakage issues, what recommendation, if any, did you make?

A We made the recommendation that the network be--a new network be built within every building.

Q Okay. And as of the time that you left the employ of Wharf Cable, which was when, please?

A I believe April or the end of March of 1995.

Q Okay. And sometime in 1995?

A Right.

Q All right. As of the time that you left the employ of Wharf Cable in 1995, what was Wharf doing with respect to this D-3 wiring issue?

A Basically, they were doing both, and I'd have to qualify that. There are some buildings that had already been rewired by a company called Pan Asia, and they had basically gone in and rebuilt a new network within the buildings because they were providing satellite signals to those buildings, or what's called SMATV in the vernacular. And those buildings that they had rebuilt were basically a very traditional cable system where they would put a satellite dish on the top of the building and then build new wiring into the homes, into the buildings, and then into the homes as well.

Q All right, let's go back to this picture that we have on the screen here. Wharf's original plan was to just leave the wiring in place?

A Yes.

Q And tell us about how this picture reflects what we've been talking about in terms of what your advice was.

A Well, our advice was to build a new network within the building, and the cable and the tap on the left-hand side is Wharf Cable's, so that would be--that was showing that they actually have built new networks within the buildings.

Q Okay. Let's move to another topic briefly here before the break. And I'll show you another exhibit here upon the screen, and that's Exhibit 1012, which is a January--pardon me--a February 3, 1993 memo from Mr. Bateson to Mr. Ng, Mr. Keefe and others, and Mr. Blackman--have to get his name in here somewhere--and yourself, and I'd like to turn you to the fourth page of this document here. And it says, "The network architecture proposed using hot drops, that is, cable signal delivered to every home whether or not the person is a subscriber, therefore, disconnecting the subscriber feed cable could not be used to present signal theft." And it says, "We have now revised our architecture based on the results from public housing VHF network trials, and we now propose to employ dual subscriber taps which will, in fact, allow us to disconnect "no subscribers" if we choose to do that--or if we so choose." Excuse me.

All right, first of all, what was--let's go back to the fall of 1992. What was Wharf's plan, if anything, with respect to wiring every home in Hong Kong with a signal?

A Basically, it was to provide signals through the wires that were existing in the buildings at that time to every subscriber; or everybody that had a wire running into their home.

Q And so explain that in a little bit more detail. I mean, that means that--well, you tell me. What does that mean as a practical matter in terms of whether non-subscribers or subscribers are wired?

A Basically, what they were going to do was take the signals that were coming off the microwave, tap into the wiring that was already in the building and basically put signal down that wire, which in a CABD type of atmosphere where they really didn't pay for the service, it was free, because all they were getting was the off-air channels, if it was just a CABD system. They would then tap into that wiring and so at that point, everyone would be getting cable signals over the network that was there.

Q Would subscribers be getting cable signals?

A Both subscribers and non-subscribers.

Q And what was your reaction to that bad--pardon me--what was your reaction to Wharf's idea?

A Basically, my reaction was I was more afraid of ingress/egress problems, having looked at a lot of the CABD systems that were in Hong Kong at that time, and also a lot of the private networks. Actually, the private networks were probably worse than the CABD networks were, but both of them had the potential for both ingress and egress.

Q So what was your view, if anything, on wiring every home with a live signal?

A That we shouldn't do it. Again, I'm from a traditional cable background and I only wire to subscribers.

Q All right. Let's talk about DISCOs for a minute. What, if anything, is a DISCO in the context of the cable industry?

A A DISCO is a disconnect, so you actually disconnect the cable signal from the subscriber.

Q What's the relationship between disconnects and this wire every home issue?

A Well, if you wire every home, every home is there so you can't really disconnect it. If you disconnect them, since they're on a community network, if you disconnect their cable, they can't receive the off-airs, the terrestrial signals or the local channels. So if you disconnected them, you're taking away, if they weren't subscribers, you're basically taking away their off-airs.

Q All right. What, if anything, is your understanding of a hard DISCO?

A Hard disconnect is when you physically send an installer or a service tech out to disconnect the cable from the tap or from the home.

Q All right, let's go back to this picture here, which is Exhibit 1716-P, and explain, if you would, how a hard disconnect would work on this.

A Well, the picture shows a tap with an input and an output cable. So basically there aren't any subscribers on this tap. If there were, there would be another connector and cable exactly like the one that's going through the middle of the tap. There would be a wire going from there either to the home or tied over to the network that's there now, the subscriber drop that's there on the right-hand side.

Q Okay. And what's a soft DISCO?

A A soft disconnect is where you, if you are using a decoder in the network, you turn the decoder off so the signal does not come through the decoder.

Q Okay. What, if anything, was UIH's recommendation as to hard DISCOs versus soft DISCOs?

A It was our recommendation to do hard DISCOs, along with soft DISCOs as well.

MR. WILSON: Your Honor, this would probably be a good time for the break.

THE COURT: All right.

(10:13 a.m. - Recess accordingly.)

(At 10: 30 a.m. on March 10, 1997, with counsel for the parties present, the following proceedings were had:)

MR. WILSON: Your Honor, if I could do another housekeeping point just before the jury comes in?

THE COURT: Sure.

MR. WILSON: We'd move the admission of 1611-A and 1611-C as well.

MR. TULLY: No objection, Your Honor.

THE COURT: All right. (Trial Exhibits 1611-A and 1611-C were received in evidence.)

MR. WILSON: Thank you.

(Jury present.)

THE COURT: Okay, go ahead, please.

DIRECT EXAMINATION BY MR. WILSON RESUMES:

Q All right, back to the world of YAGs and DISCOs, Mr. Williams. You've been talking about advice that you gave to Wharf Cable and positions that they adopted, et cetera, et cetera. At the time that you were giving the advice that you've testified about this morning, who was your employer?

A UIH.

Q Okay. United International Holdings and not Wharf Cable?

A Correct.

Q And just again to give the jury clarity on kind of the history of your employment, you started with UIH in 1991; right?

A Yes.

Q And you left UIH in approximately April of 1993?

A Yes.

Q To go to work for Wharf Cable?

A Yes.

Q And then you left Wharf Cable in 1995?

A Yes.

Q To go back to UIH?

A Yes.

Q Okay. I want to stay just for a couple more minutes on this wire every home with a live signal issue. Ultimately, what, if anything, did Wharf decide to do with respect to that issue?

A They now, as far as I know, unless they've changed it since I left, they're rewiring every building with new wires, and they are using some existing drops if they have to. So basically, the majority of the network in the building has been rebuilt except for some of the drops where they are utilizing the drops if they can.

Q But as to wiring every home with a live signal, what, if anything, are they doing there?

A As far as I know, they are not wiring every home.

Q So all right, let's move to another topic here, and this is decoder rentals versus decoder sales. What, if anything, was Wharf's position on that topic as of the time that you began working on the Wharf Cable project?

A During our initial discussions, it was their idea to sell the converters retail.

Q And the converters are these--

A I'm sorry, decoders.

Q The decoders are the boxes that are on top of the T.V. sets, the set top boxes, as we've called them?

A Yes.

Q And Wharf's plan was to sell the decoders?

A Yes, it was.

Q And what was your reaction to that?

A My personal reaction was not to sell the converters.

Q Why is that?

A Traditionally in cable systems, we try to retain ownership of the converter box, so we rent the converter box to the subscriber.

Q Why?

A Just to maintain--basically, to maintain ownership so if there is any potential theft of service, you can say that converter is mine and I believe it ties to some kind of legal action that you could take.

Q And if, by contrast, if the subscriber owns the box, then what happens?

A Basically, the idea is that they could tamper with that box since they own the box, and you would have no legal recourse if they tampered with it for theft of service.

Q What, if any, recommendation did you make to Wharf on the issue of renting versus owning decoders?

A I believe I said that we should rent the converter, not sell it.

Q And what was Wharf's--what is Wharf doing as of the time that you left the employ of Wharf Cable on the issue of rent versus owning, renting versus owning decoders?

A They're renting the converter.

Q Let's turn to another topic, still on decoders, but this time the type of decoder that should be used. At the time that you began working on the Wharf Cable project, what was Wharf's plan as to the type of decoder that should be used?

A It was converter, or a decoder that was called cut-line rotator or line manipulation.

Q Without getting technical, explain that as compared to other technologies.

A Basically, it totally obscures the picture, so you would see pretty close to a black screen or a black screen with a number of lines, white lines going through it, a couple hundred white lines going through it. So there would physically be no way that you could disconcern what kind of video content was being shown.

Q As compared to other technologies, how were these line manipulation decoders that Wharf was favoring priced?

A I believe they were very highly priced.

Q In a dollar range, how high priced were they?

A Initially, I believe it was around 165 U. S. dollars.

Q And did you have a reaction as to--or what, if anything, was your reaction as to Wharf's preference on decoder technology?

A When I first started, their preference seemed to be that it was line manipulation decoders at that time.

Q And did you make a recommendation to Wharf on that issue?

A I made a recommendation that we use the baseband converter.

Q And why was that?

A Basically because of the cost of the baseband.

Q Okay. And what about this--what concern, if any, did Wharf have about the security of the decoder?

A Wharf had some major concerns on the security aspect of it, and I believe that was tied to the fact that since they were going to have live signal going into everyone's home, they needed a higher level of security because even non-subscribers could go out and buy a box or get a box and come in and try to, you know, what we call hack the signal.

Q And what was your reaction?

A Again, we were trying to tell them that we didn't think that the idea of providing signal to every single home in Hong Kong was a good idea, and that the industry in the United States had been using baseband converters for a number of years, and also some of the operators in Europe had also used them, and we thought that was a good enough security system.

Q Why is that?

A Basically, because you were only giving it to subscribers and there were a number of ways of continually trying to defeat any pirates that were out there. The idea in--

Q Let me stop you there. Hold it. We've got DISCOs, YAGs and now we're talking about pirates. What's a pirate?

A A pirate is someone that basically steals your signals.

Q All right. You said that there were--before I stopped you, you said there were ways to defeat pirates using baseband decoders. Explain that.

A The industry vendors that build decoders and actually develop the algorithms that the chips use for security were using at that time something called, in the vernacular, a silver bullet. And basically, what it did is once they got their hands on a pirate box that someone that had developed a way around the security system, they sort of reverse engineered that, developed a way to basically--again, it's vernacular--sort of shoot a silver bullet down the network which would disable only the pirate boxes, not the paying subscriber boxes.

Q All right, let's walk through this. You find there's a pirate box; right?

A Right.

Q And then if you have a baseband technology, use the silver bullets to do what?

A It basically disables just the pirate boxes.

Q And so what happens to the pirate boxes at that point?

A They become unable to descramble the signals.

Q And so the piracy is ongoing or defeated or what?

A It's defeated until the next time that they find out another way around that one.

Q And then what happens then?

A Then you continue to work with the vendor to continue to try to develop ways of defeating the pirates. And with GI's contract that we had negotiated--

Q GI's, General Instrument or Jerrold?

A General Instrument.

Q With GI's contract, what?

A We had a clause in there that stated that they would do whatever possibly they could over a number of years to defeat the pirates. If we basically brought them a pirate box, they would do anything in their power to defeat that. That was part of their contract. So we had a commitment from the vendor that they would continue to work with us if pirate boxes became established in the network.

Q What, if any, discussions did you have with Wharf on the issue of absolute security?

A I believe I had discussions with Stephen Ng and other people that absolute security was a misnomer. Being in the crypto business in the Marine Corps, you never say never when it comes to security, because someone has either enough money or enough computer power or whatever to re-engineer or reverse engineer anything that you can develop. A perfect example, you have computer hackers now that are hacking into NASA and the defense industry.

Q Let me turn you to another exhibit. This is 1018--or pardon me--this is 765, which is a memo from Mr. Van Demark of NYNEX to Mr. Oswald of NYNEX, and I'll zoom that in on your screen so you can see it here. It says, "Also, I spoke to Blake Williams regarding decoders. The issue is complicated, but I think it comes out to this. Will it cost much

to break the encryption algorithm?" And then it goes down and it says, "Blake believes that we should cost out the encryption breaking estimate, the potential loss as a result, and compare it to the cost of the line manipulation box, which is 10 to 15 per cent more than a baseband box, and determine whether it's worth the risk."

Can you explain that for us?

A Yeah, basically we had a discussion that--

Q We is who?

A Myself and Mr. Oswald from NYNEX and Mr. Van Demark I believe was also there. And we were going over the issues because they understood that there were the two issues, line manipulation versus baseband, and I believe that at that time, NYNEX in their England properties had developed a baseband box, or had bought baseband boxes. So, you know, they were aware of the issues, and it was my determination that, well, we'd just do a cost estimate of how much it takes to break to see if--they had a group called the S&T Group, I think, which is their science and technology group, and they brought up the suggestion that we give through Jerrold's or GI's approval, that we give them a baseband box and see if their science and technology group could break the algorithms, so basically reverse engineer that box. And I believe that we went through that process, but I don't know whether they actually tried to break the algorithm.

Q All right. Since we're on the subject of NYNEX, generally, what role, if any, did NYNEX have on the cable--in the cable project?

A None that I'm aware of, except looking sort of over our shoulder to see what we were doing.

Q All right. And when you were making these recommendations to--in your duties as acting chief engineer of Wharf Cable, in your duties in that capacity, what role did NYNEX have in assisting you in those duties?

A None.

Q And in dealing with the Hong Kong government, as you've discussed earlier, what role, if any, did NYNEX have in assisting you in those duties?

MR. TULLY: Again, Your Honor, I've been trying to let this go as fast as possible, but I'm going to have to object to the continuing leading.

THE COURT: Sustained.

Q (by Mr. Wilson) What role, if any, did NYNEX have with respect to the Hong Kong government?

MR. TULLY: Same question, Your Honor.

THE COURT: That's phrased correctly, though.

Q (by Mr. Wilson) You can answer.

A None that I--from the cable side of it, none that I remember at all.

Q In your dealings with vendors--I'll withdraw that question. Let me try and move this along; I'll move on to another subject here.

Let's go back to baseband versus line manipulation. Wharf's original position was line manipulation. Your recommendation was?

A Baseband.

Q And what, if any, decision was ultimately made with respect to decoder technology?

A They're using Jerrold's or GI's baseband converter.

Q All right. What role, if any, did you play in the pricing of the decoders?

A I was in the meetings that they had in England when we were discussing pricing with the vendors.

Q Let's go to another exhibit here. This is Exhibit 942, which is a letter from Mr. Yu, Y-u, of Wharf, to some guy, Martin Gough, or something like that, at some outfit called Marconi in England, and it says, "As per your request, I inform you the representatives from Wharf Cable who will attend the demonstration in Marconi's establishment at Bornwood for the week of 15 January 1993 in the following:

Mr. Ng, Mr. Keefe, Mr. D'ottavio, yourself, Mr. Sears, Mr. Williams and Mr. Yu." What was--what were these tests?

A Basically, Marconi was testing the baseband converters over short portions of the network that they had sort of prototyped for us and Bornwood, England.

Q And did you attend those tests?

A I did.

Q Representing whom?

A Wharf Cable.

Q And who was your employer at the time?

A UIH.

Q And were there meetings after these tests concerning decoders?

A After the test, I believe we went into the negotiation for price.

Q And what role, if any, did you play in those negotiations for price?

A I was basically there as the technical representative, so if either Stephen or Dave Keefe or Dave D'Ottavio had questions that the vendors brought up from a technical standpoint, I could answer those.

Q What role, if any, did Mr. D'Ottavio and Mr. Keefe and Mr. Ng play in the price negotiations?

MR. TULLY: Compound.

MR. WILSON: I'll break it up. You're correct.

THE COURT: Sustained.

Q (by Mr. Wilson) What role, if any, did Mr. D'Ottavio play in the price negotiations?

A Mr. D'Ottavio was there to sort of facilitate, and basically it was sort of a round table discussion where the vendors would talk about their technology, the box, their support systems, et cetera, and then bring up a cost, so everyone would be allowed to ask questions. So basically everyone there, Dave D'Ottavio was there to sort of needle them, I guess, to a certain point to

say, you know, that cost is too high, we need a lower cost or we need an additional feature for that cost.

Q Okay. I'm going to digress for just a second here. I want to go to another document, it's Exhibit 832, which is a memorandum from Mr. Walvich to Mr. Van Demark, and this says that the chief planner of Wharf Cable is Mr. Williams of UIH, an American cable company, expect to be a third partner with Wharf and NYNEX in the franchise.

Do you believe that the description of you as chief planner is accurate or inaccurate or something else?

A I believe it to be accurate.

Q And that would refer to your capacity as acting chief engineer of Wharf Cable?

A Yes.

Q We're back on--let's stick with decoders for one more minute here. What's a SmartCard?

A A SmartCard is something that's used in the industry. It can be used two ways, I believe. You can actually have the algorithm chip on it so you plug it in and it actually is the--

Q All right, let's slow down a little bit. In simple non-technical terms, what's a SmartCard with respect to decoders.

A A SmartCard is something that you could plug into the side of the converter and that card provides smart intelligence to the converter. It could be changing the language of the--like you have a menu system where it says on Channel 8 or Channel 9 is this programming. That SmartCard could be used to change

that from English to Chinese characters. It could be used physically--actually a SmartCard could be used for pay services where you would go out, obtain a SmartCard, plug that in and it would actually--you would have a credit attached to that card, and then as you watched pay movies, it would actually physically subtract that credit from the SmartCard. So, you would deplete your credits until you'd have to go and get another card or be issued one. They were also talking about SmartCards actually physically having the algorithm chip on it in case it was hacked or pirated. So, at that time, instead of going in and physically having to recover every single decoder from a subscriber's house, you could actually just go and mail them a new card, a new SmartCard, if it had been pirated, and they could plug that new SmartCard and continue to watch services.

Q All right. What, if anything, was Wharf's position on whether to use SmartCards in connection with their decoders?

A Initially they were looking at using a SmartCard type system.

Q And, what was your reaction to that, if anything?

A My reaction was not to use a SmartCard.

Q Why is that?

A Purely from an operational standpoint, we looked at the vendors who were--

Q Stop. We is who?

A We being UIH.

Q Okay. Please continue?

A We were looking at the SmartCard aspect that if we deployed the network as quickly as we thought we would and we had as many subscribers as the business plan was projecting we would, potentially in a year or so we were looking at 250,000 SmartCards out there. Now, if someone actually had pirated that card, you know had the logistic aspect and also the additional cost aspect of getting new cards to those subscribers. So, you'd have to find out who had been pirated. You would then have to buy the new card and then you would have to deploy that in the field, as well. So, purely, from an operational standpoint, I looked at it as a nightmare.

Q What impact, if any, would the use of SmartCards have on economics?

A I believe, there was analyses done that--we did an assumption, I think, that the SmartCards could be pirated approximately every six months. When you added that up where you were deploying that, the numbers got rather big as your subscriber base got larger as you deployed the network, and we thought there was definitely a cost-savings in using the baseband converter at that point.

Q What kind of cost-savings?

A I would say--

Q As to SmartCards. Using or not using SmartCards.

A Over the term of the license, probably hundreds of thousands of dollars, at least.

Q Okay. And, as of the time you left Wharf Cable in 1995, what use, if any, was Wharf making of SmartCards?

A None that I know of.

Q All right. I'm going to switch over to--we've talked about DISCOs, YAGs, and all this stuff. Now, I want to talk about megahertz. What's a megahertz?

A To put it easily, a megahertz is the way that we measure the amount of signal that can go down the cable. The more megahertz, the more services or video channels or data channels you can provide over the network.

Q All right. And, at the time that you began working on the Wharf Cable project, was Wharf's position on the--bad question; let me try it again. At the time you began working on the Wharf Cable project, what, if anything, was Wharf's position on using a particular megahertz?

A I believe, they were talking about using 550 megahertz.

Q What was your reaction to that?

A Initially, I thought that was good enough, but we had been looking at the vendors and they were now at that time starting to produce 750 megahertz equipment. So, we thought we might as well go for 750 now, if we could, because we thought there was a potential cost-savings at that time.

Q And, what, if any, recommendation did you make to Wharf on the appropriate megahertz to use?

A My recommendation was 750 megahertz.

Q And, when did you make that recommendation, approximately?

A I believe, we had talked about it before the bid had gone in, but I actually recommended it after the bid went in when we started to really have serious talks with the vendors.

Q And, what, if anything--was there ever an issue--bad question. What, if any, issue was there at any time regarding a higher megahertz?

A Some time in the time frame that I was there as a UIH employee, they had started to talk about 860 megahertz which was a format that was being used in Europe. We took a look at the 860 megahertz equipment and we decided that it was only being manufactured by a very few number of vendors in Europe--not just in England, but in Europe. And, they were using basically what we considered non-standard type of interfaces. The connectors were more expensive going into the 860 equipment. It was difficult for us at that time to get specifications. We were dealing with, I believe, one vendor for the 860 equipment. We could not physically get specifications from them. I believe, we even asked them to come over and demonstrate their product which they didn't.

Q What, if anything, was your opinion on whether 860 equipment should be used?

A My opinion at that time was to use a standard U. S. industry standard which was 750 at that time. That was the high point--or the high-tech side of the industry at that point.

Q And, why not use 860 though?

A Again, looking at it from a cost standpoint, the costs were higher both for the amplifiers--the costs were higher for the connectors because they used a non-standard interface in the amplifiers.

Q And, what megahertz is Wharf using today?

A 750 megahertz.

Q Let's go to this chart that I have on the screen here. This is another exhibit that I borrowed from the defense. This is Exhibit 1702. In the context of this exhibit, what's a crossover filter?

A That was the filter that they were proposing to use to cross over from the CABD network and then go into the UHF side in the subscriber buildings.

Q What impact, if any, did that have on these megahertz issues?

A Well, again, we looked at the crossover filter that they were proposing and, one, initially it was going to be an active crossover filter and so it actually needed electricity to run. The other aspect again is in the cable industry what we were trying to do and still are trying to do is to limit the number of active electronics that are in the network.

Q Why is that?

A Operationally, it provides you the ability to have less trouble out in the field. So, if you had--instead of having, you know, 600 amplifiers out in the field, you're trying to get that down so you have less, 200 or 400, amplifiers. So, you have less points of potential problems in the network.

Q So, Wharf's position was to use more or less amplifiers?

A Initially, more amplifiers. And, the crossover filters, again we consider that just to be another piece of electronics that was going to be introduced into the network that had the potential for failure. We thought that that was operationally not a very wise thing to do.

Q And, as of the time that you left Wharf Cable in 1995, what, if any, use was Wharf making of crossover filters?

A I believe, there's no crossover filters being used in the network.

Q Before I put this up, let me ask you a question. What, if any, brand of line manipulation box was Wharf thinking about using when you first started working with them?

A I believe, it was a company called Video Crypt.

Q All right. This is 1602. I want to leave this topic of sort of, you know, what your advice and recommendations were and then what Wharf ultimately ended up doing. Wharf's plan before UIH was involved on decoders was to use what type of decoder technology?

A Line manipulation.

Q UIH's recommendation, if anything, was what?

A Baseband.

Q And, Wharf ended up using?

A Baseband.

Q Skip over pricing for a minute. What was Wharf's approach on rent versus selling--renting versus owning decoders?

A Owning decoders.

Q And, UIH's recommendation, if anything, was?

A Renting.

Q And, Wharf ultimately did what?

A They're renting converters.

Q Wharf's position on SmartCards originally was what?

A They were looking at utilizing SmartCards.

Q And, UIH's recommendation was?

A Not to use SmartCards.

Q And, Wharf ultimately is using or not using SmartCards?

A Not using SmartCards.

Q On wiring every home with a live signal, Wharf's initial position was what?

A To wire every home.

Q UIH's recommendation was what?

A Was not to wire until they became a subscriber.

Q And, Wharf is actually doing what?

A Sort of a combination of both.

Q All right. On network design on this megahertz stuff, Wharf's position was which frequencies?

A 550 and then also 860.

Q UIH's recommendation was?

A We went along initially with the 550, but then after talking to the vendors, 750, as well.

Q And, Wharf is now using?

A 750.

Q On fiber optics systems design, that's the super trunking issue, Wharf originally wanted the 10,000 homes per node?

A Yes.

Q And, your recommendation was what?

A I think, I recommended both 5,000 or 2500; than, it actually came down to approximately 1200.

Q All right. And, these recommendations that we've talked about that UIH made that you were involved in, these were made before or after you left the employ of UIH to go work for Wharf Cable?

A Before I left UIH.

Q I want to move to another topic which is these time sheets that we've started to hear a lot about. There should be--if you take off a couple of folders, there should be--those are kind of loose. Let me just turn to the one that's--there are numbers down in the lower right hand corner and we've got one that's numbered 1548. It should be for the October 17 through October 30, 1992 time frame. Do you see that?

A Yes, I do.

Q And, whose time sheet is this?

A It's my time sheet.

Q Now, this shows company allocation 100% Hong Kong. Do you see that? Thank you, Mr. Gilmore. We've got company allocation 100% Hong Kong. What does that mean?

A That means 100 % of my time that week was spent on Hong Kong.

Q Okay. And, this actually would be for a two week period, correct?

A Yes.

Q All right. And, when you were working with UIH on the Hong Kong project, did you have some kind of hourly rate?

A No, I did not.

Q And, going to another exhibit we've talked about before, Exhibit 1612, this shows that from June of 1992 through March of 1994, you had 1,000 hours on the Hong Kong project. My question to you is do you believe that number to be low, high, right on the money, or something else?

A I believe it to be low.

Q Why is that?

A Historically, when we work on projects and we turn in time sheets just like, I think, most salaried people do, any overtime worked is not reflected in the time sheet. In fact, we were told not to at one time in my employ with UIH to not show overtime. It's a 40 hour work week, no matter what.

But, there were many times that--in fact, the majority of the time, we were working overtime.

Q And, when you're talking about this 1,000 hours, you believe that's inaccurate for the period of time that you were UIH employed or Wharf employed?

A Both.

Q Okay. From June of 1992--well, from the period from August of 1992 through the time that you left the employment of UIH, do you believe that the 1,000 hours is understated, overstated, right on the money, or something else?

MR. TULLY: Your Honor, it's been asked and answered.

MR. WILSON: Well, I'm trying to clarify that this is during the time that he was with UIH as opposed to over at Wharf.

THE COURT: All right. The objection is overruled.

THE WITNESS: I believe it to be understated.

Q (by Mr. Wilson) And, for the reasons that you've already explained to us?

A Yes.

Q Do you have an estimate as to by what percentage this is understated, to use your word?

A I'd have to say at least 50% understated.

APPENDIX CM

Excerpt from Direct Examination of R. Pittman

March 11, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 5021-5025; Transcript 2864-2868)

Excerpt from Direct Examination of R. Pittman

March 11, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 5021-5025; Transcript 2864-2868)

or February; something like that.

Q January or February of 1993?

A Yes, sir.

Q And after Ninex ceased its involvement -- or, pardon me, after Ninex indicated that it did not want to invest in the cable project, did UIH's involvement in the project stop or did it continue or do something else?

A It continued.

Q I want to go on to one final subject here, Mr. Pittman. And I appreciate your patience and good humor through all this.

This is Exhibit 1612 which we'll put up. And before I do that, I want to go into some time sheets that you prepared.

A I don't have those here; right?

Q I'm sorry. Mr. Gilmore, can we get Exhibit 2?

A I don't need that if they're on here.

Q Yeah, well, I'll just show them to you on the screen. We'll save Mr. Gilmore the trouble and we'll move this along.

THE CLERK: Thank you.

Q (by Mr. Wilson) Yeah. Well--I apologize.

All right. So we're--we've got time sheets for you and we've got, Mr. Pittman location Hong Kong, Saturday, 25th July, August 7, '92, 70 percent of your time on Hong Kong. And then we could flip through these in succeeding two week periods, 80 percent Hong Kong; right?

A Yes. What were the dates? I can't--

Q The first one--

A Okay. I see. I see. Yes, sir.

Q The first one is July 25th to August 7th, 1992.

A Yes.

Q 70 percent of your time on Hong Kong and 80 percent of your time on Hong Kong August 8 through 21st. August 20--correct?

A Yes.

Q August 22nd to September 4th, 70 percent time on Hong Kong. September 6th through the 18th, 80 percent time on Hong Kong; correct?

A Yes.

Q September 19th through October the 2nd, 70 percent time on Hong Kong; correct?

A Correct.

Q October the 3rd to October the 19th--or October 15th, 1992, 90 percent of your time on Hong Kong?

A Yes.

Q Correct?

A Uh-huh.

Q October 17th to October 30th, 1992, 95 percent of your time on Hong Kong; correct?

A Yes.

Q October the 31st to November the 13th, 100 percent of your time on Hong Kong?

A Yes.

Q Then again November 14th through 22nd, 100 percent Hong Kong; correct?

A Correct.

Q Next one November 28th to December the 11th, 100 percent Hong Kong.

A Yes.

Q December 12th through December the 25th, 100 percent Hong Kong. And it looks like you went on vacation for a little while. We go into December 26th into early January '93, still 100 percent Hong Kong. January 9th through 22nd, 100 percent Hong Kong; correct?

A Correct.

Q January 25th to February 6th, '93, still 100 percent Hong Kong; correct?

A Correct.

Q And it looks like February 6th through the 19th you don't have any Hong Kong time, and back--we go back to February 20th through March the 5th, 40 percent Hong Kong. March the 20th to April 2nd, 30 percent Hong Kong.

Now, in this period of time we're getting the period when you're transitioning your duties to Mr. Keefe?

A Correct.

Q All right. And so April the 17th through April the 30th, Hong Kong only a day. Then we go back May 15th to May 28th, Hong Kong back up to 20 percent. 15 percent Hong Kong on May 29th through June 11th; correct?

A Correct.

Q 20 percent Hong Kong June 12th to June 25th; correct?

A Correct.

Q Ten percent Hong Kong in June and then it goes--goes on. Mr. Pittman, on these time sheets, let's just take the first one as an example. You're allocating a percentage of what?

A Of a five day working week.

Q Were you working more than a five day work week? Less than a five day work week or what during this time period?

A Yes, everyone was.

Q Pardon me?

A Everyone was. Wharf, ourselves.

Q Working more, less or a five day work week?

A Considerably more than a five day work week.

Q And what kind of hours were you putting in during these work weeks?

A I would say with Steve and Blake and myself a typical work week was 70 hours. 60 to 70 hours. Saturdays were a regular work day, at least a half a day at Wharf anyway, so it was a five and a half day work week for everybody. The reporting system and because we were management employees and all that sort of stuff, we only reported five day. Overtime wasn't a part of our deal.

Q Okay. Would that be true up to the period of time that you prepared these times sheets on Hong Kong?

A Pardon?

Q Would--would the type of hours that you've described be consistent throughout the period of time that you're allocating time on the Hong Kong project?

A Oh, absolutely. The only clarification is you can see there's a departure from the amount of time spent on Hong Kong at or about the time that David Keefe arrives, but that split only related to the five day work week because during the initials months after David's arrival, for the most part I would be back in Hong Kong. That's where my wife was hanging out and a lot of time on Saturdays and Sundays was spent with David when I wasn't in other parts of the world there.

Q All right. Let's go to a final exhibit here which is 728. This is a memo from you, to Mr. Pittman and- pardon me, from you, Mr. Pittman, to Mr. Fries and Mr. D'Ottavio.

A Do I have that one here?

Q No, if you'll just look at it on the screen I'm going to direct you to a portion of it. This is dated November 8th, 1992 ; correct?

A Yes.

APPENDIX CN

Excerpt from Cross-Examination of R. Pittman

March 11, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 5045:21-5049:24; Transcript 2888:21-2892:24)

Excerpt from Cross-Examination of R. Pittman

March 11, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 5045:21-5049:24; Transcript 2888:21-2892:24)

Q (by Mr. Bauer) The next question and answer, Mr. Pittman, is, "What is your understanding of an IRR that financial institutions would require in order to provide debt financing for an investment along the lines of ten percent of the equity of Wharf Cable? Answer: I think we discussed this earlier. I think the low side of that, our view would be, you know, 30 percent. In the mid-range I think would be in the mid-30 range, I think would be a minimum target we would be satisfied with." Were you asked that question and did you give that answer?

A Yes.

Q And isn't it correct, Mr. Pittman, that the bid case was not in the mid-30 range or even the 30 percent number? Or do you recall?

A The bid case being the one that went in with the proposal?

Q Right. The one that--the one that you were working from to get to a shareholder case, an investment model, an investors' case.

A Yeah. I suspect that it probably was not. I can't tell you specifically what it was, but at that point it wasn't meaningful because we knew going in and knew at that time that the plan needed a lot of work and I think Wharf felt very much the same way.

Q A more profitable business is better than a less profitable business?

A Yeah. I mean, it could--the plan needed further refinement.

Q But UIH had a specific need in addition to profitability which was to get financing for its anticipated ten percent investment; correct?

A Which they did, yes.

Q And in the fall of 1992, did you understand that we're talking about somewhere in the neighborhood of 40 to 50 million dollars for a ten percent interest?

A Yes.

Q And isn't it a fact, Mr. Pittman, that Mr. Hudon and others had been trying for a year already to raise that money in a Asian regional fund and up until August and September of 1992 had not raised a penney in an Asian regional fund?

A I don't know how long that process may have been going on. It was--it was going on when I arrived and it was a continuing process that we worked with Wharf on because there was financing required on their side as well. So that was--to a large extent was a cooperative effort. Important to us, nevertheless.

Q Was it your understanding, Mr. Pittman, that in the fall of 1992, UIH Asia was trying to raise somewhere between 60 and $100 million to fund its various opportunities in Hong Kong, Taiwan and Thailand?

A I don't know the amount, but, yes, we were trying to raise funding.

Q Well, let's see if I can refresh your recollection on the amount. Would you turn to page 72 of your deposition?

A Yes.

Q Would you please read to yourself the question and answer at line 2 through 6 there?

A Yes.

Q Does that refresh your recollection of the amount that UIH Asia was trying to raise in 1992?

A Yeah, I--I--you know, it's been a while, but I--it doesn't surprise me and if that's what I said, that's what I recalled at the time, yes.

Q Did UIH Asia raise 60 to $100 million in the fall of 1992?

A They raised it, but it wasn't in the fall of '92, no.

Q And one of the reasons that UIH wanted to get the internal rate of return up to get--to shape the business plan to get a higher internal rate of return was because it would make financing easier; correct?

A That would seem to me a fairly common sense approach, yes. You wouldn't go to a bank with a plan that lost money.

Q True. But in addition to not just losing money, if someone's going to provide debt equity--excuse me, debt financing or equity financing, they want to see a certain return

in a certain number of years because otherwise they view it as having too much risk?

A Correct. Well, so would we.

Q Sure. So--so you wanted to get the internal rate of return up to satisfy yourself and also to satisfy the sources of your funds?

A Yes, sir.

Q And it's also true that you understood in September of 1992 that the Wharf board needed to approve the financial plan; correct?

A Not correct.

Q Would you turn to page 81 of your deposition, please?

A 80--yes.

Q Starting at line 1 of page 81, were you asked these questions and did you give these answers? "Was it your understanding in August of 1992 that signing a shareholder agreement would be conditioned upon board consent on both sides? Answer: For the operating plan yes, the financing plan yes. That was it was understood that it would have been required.

"The board would have to approve the plan? Answer: Yes.

"The UIH board would have to approve it and Wharf"--excuse me. Starting on line 12 again. "The UIH board would have to approve it? And Wharf.

"Question: And Wharf's board? Answer: Yes."

Were you asked those questions and did you give those answers, Mr. Pittman?

A Yes, I did.

APPENDIX CO

Excerpt from Direct Examination of R. Pittman

March 11, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 5016-5018; Transcript 2859-2861)

Excerpt from Direct Examination of R. Pittman

March 11, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 5016-5018; Transcript 2859-2861)

A Eric Lo, yes, sir.

Q All right.

A Who had marketing credentials that lent themselves to--I don't recall specifically what they were, but lent themselves to, with some training, to the cable TV opportunity.

Q Okay. Let's--let's switch topics again and talk about subscriber management billing systems again. And this is a memo to Paul Case from yourself dated September 7th, 1992 and you say, "Dear Paul: I'm sure you knew this request was going to arrive sooner or later, so here we go. The Wharf team is now starting to seriously focus in the evaluation selection of their MIS. They are using a local firm as a consultant to assist in that process but are not that familiar with the needs of the cable network, especially one of this magnitude."

And that would--what is the local firm that you're referring to there?

A That was COL.

Q That's Mr. Hickerson's firm?

A Correct.

Q And who was Paul Case?

A Paul Case was our--

Q Our meaning UIH?

A Yes. He wasn't assigned to me, but a virtual expert on cable management systems.

Q All right. What role, if any, did Mr. Case play in the negotiations for subscriber management and billing services for Wharf?

A He came in--Norris Hickerson had done some homework in identifying potential vendors and I think we either had received their initial proposals or they were forthcoming in the near future. And Paul, I wanted him involved and believe Stephen once he got acquainted with him asked him to lead the entire procurement effort for the management information system--subscriber--

Q And--

A --management system.

Q And did Mr. Case do that?

A Yes, he did.

Q And did you witness him in negotiations?

A Yes.

Q And what role did he play?

A He took charge of the entire matter. He knew--

Q And what did he did?

A Well, he'd been in the industry for a while and he knew all of the players and the principal suppliers that we were soliciting bids from and knew what--roughly what fair treatment would be on a price and the magnitude of the system which no one else had, certainly not in Hong Kong.

Q And did Mr. Case share that information with Wharf or did he keep it to himself?

A Oh, no Wharf participated in some of these negotiations.

Q Okay.

A There were some off-site meetings that Paul had on his own in preparing for the negotiations, but he knew about what should be paid, he knew the scope of the project and how we marry that up to a--to a suitable subscriber management system. And his credentials were quite terrific and I--and--and Stephen appreciated that because this was a--this is equally a crucial--or as crucial component to a properly run cable system as anything else. And he was left in charge of it and successfully closed the--started and closed the negotiations.

Q Okay. Let's move on to another issue here which is decoders. You've talked about that a little bit. I want to go to a document and this is 350 in your pile.

A Uh-huh.

Q This is a letter from, I guess a guy named Edenbach at Jarrold or General Instrument to Stephen Mr. Ng and there's some handwritten notes. Could you--is that--first of all, whose handwriting is that?

A That's mine.

Q And could you read the notes for us?

A It's to Blake. Stephen--the note is, "Stephen would like our comments. Could you review and draft up remarks

APPENDIX CP

Excerpt from Direct Examination of R. Pittman

March 11, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 5005; Transcript 2848)

Excerpt from Direct Examination of R. Pittman

March 11, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 5005; Transcript 2848)

A Just one of the number of things that we became involved with as a part of the overall budgeting and planning process.

Q Okay. Let's move to another memo here, this should be the next one in your pile. And this is Exhibit 943. This is a memo from Mr. Moss to Mr. Ng with a copy to you and others. And it says, "Attached is an initial draft of the proposal to the Housing Authority regarding our response to the Housing Authority's request for a solution to the SMATV interconnect issue. What involvement, if any, did UIH have on SMATV interconnect issues?

A Well, there are a number of buildings in Hong Kong, I don't recall how many, but it seems to me that they had a couple of hundred thousand subscribers to SMATV television services. And part of the consideration in building the network was how do we interconnect with those existing systems because what they were carrying was--were the, I believe the Star television channels.

Q Let me stop you for a minute. What is S-M-A-T-V or SMATV?

A A satellite. It's basically a satellite system.

Q Okay. And this would be a system where their signal's beamed to a satellite--from a satellite to a particular location?

A Yes, and distributed within the building. The--

Q All right. Please--

APPENDIX CQ

Excerpt from Direct Examination of R. Pittman

March 11, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 4964-4994; Transcript 2807-2837)

Excerpt from Direct Examination of R. Pittman

March 11, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 4964-4994; Transcript 2807-2837)

Q Well, Mr. Pittman, I guess when we left off yesterday afternoon, we got you out of Westminster Cable in London, had you working for UIH, and now we're going to get you to Hong Kong.

Let me show you Exhibit 628. Probably have to turn Elmo on here. Well, I had--there we go.

Okay, miracles.

A Is that this first one here?

Q Yes, sir, it should be the first one. And again, if you could scoot closer to the microphone just so the jury can hear you.

This is--this is an internal Wharf document, dated October 19, 1992, called the Wharf Communications Investments Coordination Meeting Agenda and Notes. What I'm going to do is direct you over to the page that's down in the lower right-hand corner, numbered 4.

A Um-hum.

Q And it says, "Implementation team. Bill Pittman, the lead implementation team on network marketing and customer service. SN"--do you understand that to mean Stephen Ng?

A Yes, sir.

Q --"to issue circular."

Why don't you tell us, first of all, as of the date of this document, October 20, 1992, who was your employer?

A UIH.

Q And tell us how you became the leader of the implementation team as a UIH employee, but for Wharf Cable.

A Well, that was shortly after the franchise--the proposal submittal, which was the end of September, and we were all busy working to recruit the staffing for the key positions within Wharf Cable. And we, as a team, the UIH Asia team, had been involved in virtually all facets of the program and the proposal preparation. And I was asked if on an interim basis if I could serve in that capacity, which was to be the eventual capacity of the full-time, permanent person that was being recruited, to keep--to guide the company in its pre-franchise award activities.

Q Okay. And when were you asked to come into this position, approximately?

A It wouldn't have been more than a couple of weeks prior to that, to the best of my recollection.

Q And you're referring to prior to the date of this circular?

A Yes.

Q All right. And what discussions, if any, did you have with the folks at Wharf about coming into that position?

A None to speak of. I was asked by my management if I could and would do it.

Q Okay. And did you later have discussions with Wharf as to how that was going to work?

A There was some discussion on the form of the announcement that was going to be made because it was an interim position. Nevertheless, it was a critical one because there was so much preplanning and key decision making that had to be done, although we had not been declared at that moment, but we did know that we were the only bidder for the cable franchise.

Q All right. You mentioned a--I believe an announcement or circular or something. It's in this--if you look here, it says, "SN to issue circular." And if you look over at Deposition--or, pardon me, Exhibit 625, we've got a circular. And it says, "To the team." This is dated October 17, 1992.

"To the team: To enable Melvyn and Frank to devote most of their energy towards franchising and strategic activities, I have asked Bill Pittman to give us a hand to pre-implement the network marketing and customer service aspects of our project. To lead those activities, Bill will be full time reporting to me. He will draw an existing and additional resources and will draw up an updated organization chart and an action plan for consultation with Melvyn and Frank in the next week or so." It says, "We warmly welcome Bill and feel terribly sorry for Phyllis, Bill's wife." And then "Stephen Ng."

Is this--is this the circular that you were referencing in your earlier testimony?

A Yes.

Q Now, there's a note up at the top of this, and it says, "Bill, is this adequate for now?" And then it has Mr. Ng's initials. What do you understand that to be about?

A Well, at the time this was put out, there was some debate over what the real role would be, given that we were already involved and doing lots of the things that would be required by being officially appointed. Stephen seemed to have some concerns over making the language any more stronger and definitive than this, and I had no particular objection, given it was an interim assignment, and it at least announced the position I would be working in and I think gave me enough latitude to do what we needed.

Q All right. What I'd like to do is to focus on what you did on a daily basis in your position as the leader of the implementation team on network marketing and customer services, as Mr. Ng refers to in Exhibit 628.

A Well, as I mentioned earlier, we were--had not been declared the winner of the franchise, but we were aware that we were the only bidder. And there were supposed to be some weeks; I think initially we expected where sometime in November who the winner would be or what the process would be for the official granting of the franchise by the government.

And Frank and Melvyn were--

Q Okay. That would be Mr. Sears and Mr. Bateson?

A Mr. Sears and Mr. Bateson were well known to the public officials there, and this was a shifting of their responsibilities to see that questions were answered that they may have as they were evaluating the proposal and to see that it was as smooth a process as possible.

And given that we felt good, at least at one moment, that we were the only bidder, there were concerns that being the only bidder could threaten the process.

Q Explain that.

A Well, that they had no way of measuring our bid against competition, and would they redo the process.

Q Would--they meaning?

A The government.

Q The Hong Kong Government?

A Yes, sir.

Q All right. Please continue.

A So given that we had some level of comfort that we were going to be declared the winner, we had very tight schedule constraints, and lots of the--some key decisions that had to be made, lots of them centered around the procurement of hardware, key components necessary to build the system.

Q All right. What do you mean by hardware?

A Transmitters, decoders, all of the head-end processing equipment had lead times that would have made it very difficult in some cases to meet the promised launch date, which was, I believe, July or August of that year for the first customer.

Q This would be July or August of 1993?

A '93, yes.

Q Okay.

A Of course, the vendors were taking advantage of this by putting pressure on to get the order, that we've got to get started, otherwise we can't--we can deliver so many days after receipt of an order.

Now, these were not small decisions because they were very capital intensive.

Q What do you mean by that?

A They were expensive items to procure, and if you were to order them and not win the franchise, what would you do?

So this was sort of a two-pronged approach with Mr. Sears and Mr. Bateson, making sure that side of the process was proceeding smoothly.

Q That side meaning what side?

A The relationships with the Hong Kong Government and the--

Q Okay. And that's one side of the process, and the other side would be?

A Was to basically start to run the business in a fashion assuming that we would win--would win the franchise and to make those key procurement decisions. And staffing decisions were also a part of this because it was difficult to recruit people when you couldn't honestly admit that you had the franchise in hand.

So we were lining people up trying to get them ready for a quick response, and one of those decisions that we did make prior to having the franchise in hand was to hire the permanent person for the position that I was carrying for those few months.

Q And who was that?

A That was David Keefe.

Q Okay. Just so we're perfectly--we're clear on this, you described these two sides of the process, and Melvyn Sears and Mr. Bateson are working the government's side, correct?

A That was part of their responsibilities, yes.

Q Okay. And your involvement is primarily on which side, the government's side or on the implementation side?

A The operating and implementation side.

Q Okay. What other types of things were you doing in your capacity as leader of the implementation team?

A Well, some of the--a lot of it was just the flow of resources and organizing some of the key people within UIH to help with some of this decision making. The decoder negotiations were key. They were not complete, as I recall, at the time of this appointment. Dave D'ottavio, who was my boss, was leading that part of the negotiation.

Programming was another key issue, key concern of ours, in terms of the cost of the programming that we had initially put into the plan. So there was a refinement of what services we were going to offer, what the nature of the programming was going to be, and that had to be kicked off quickly, too,

because that had virtually a life of its own if we were going to have services ready to deliver by the launch date.

So there was programming, there was hardware procurement. We had to address the variety of marketing approaches that were under consideration, decide on what was the best, and there were some differing views on that as well.

So there was a lot of key decisions of that nature to work out, and being mindful that this was a very, very large project. And you sort of did what you had to do in terms of coordinating activities in a pretty fast-moving environment.

Q Okay. Let's stop you--well, just let me take you up to the time that Mr. Keefe came into his position, and you recall that being approximately when?

A Late January or February of ' 93.

Q All right. Let me show you a document, and I'm just going to stick this up on the screen because I've got it out of order in your pile, and I won't subject you to the indignity of having to try to go through the paper and find it.

But this is Exhibit 980, which is another circular, this one dated January 26, 1993, to all team members, again from Stephen Ng. And this one says--it's about David Keefe.

"I'm most delighted to announce that David Keefe has joined us as cable operations director designate. In this position, he will be responsible to me for network, marketing, customer service, taking over from Bill Pittman."

And this is--how, if at all, is this memo consistent with your recollection as to when Mr. Keefe took over for you in your capacity as head of the implementation team?

A Yes, that's about the time.

Q All right. I'd like to go back and talk a little bit about the types of things that you were doing prior to the bid application going in, all right?

A Um-hum.

Q Were those similar or different to the types of things you did as in your capacity as leader of the implementation team?

A They were very similar, absent having direct responsibility, even on an interim basis, to do those tasks. We were involved pretty much in the same way.

Q Okay. And what types of things were you--when did you first arrive in Hong Kong, do you recall?

A July or August of '92.

Q And what types--could you--could you just tell for us, please, the types of things that you were doing in connection with the Wharf Cable project in the July--pardon me, in the August/September, 1992, time frame?

A Well, I had a team of people, a group that provided engineering discipline, financial discipline.

Q And who were those people?

A Blake Williams was the engineering manager that I had, and Steve Moss was my financial guy.

Q All right. Why don't you explain for us the types of things that you and Mr. Williams and Mr. Moss were doing in the August/September, 1992, time frame in connection with the Wharf Cable project.

A Well, the proposal, of course, was at its peak period of activity, and the business plan, the financial plan that was associated with building the network was going through considerable shaping as we came up with preliminary costs and refined them down, and then we're getting sub-vendor bids and marrying them up with schedule requirements, and to develop a business plan that was suitable for--in support of the proposal. Being a large project, it was a very significant and detailed business plan, and we were going through virtually weekly shaping and iterations of that plan to come up with one that would be satisfactory to all of the shareholders.

Q Okay. Let me--let me stop you there for a moment. In working on the business plan, was--were UIH people working by themselves, or were they working in conjunction with other people or something else?

A No, we worked very much in conjunction with the Wharf team, sure.

Q Okay. On business planning issues, who would have been the people with whom the UIH team were working?

A Well, a lot of this fell under the financial arena, so Steve on that particular item was sort of our--

Q This is Mr. Moss?

A Yeah, Steve Moss.

Q Okay.

A And he worked hand-in-hand with Emil Fung, who was performing in a similar capacity with respect to the business plan for Wharf. And what Steve brought, of course, was years of cable experience and the modeling of these kinds of operations--

Q Okay.

A -- which happened to be a skill that was absent in Wharf because they, of course, had not been in the cable business ever before.

Q Okay. Explain that. I'm sorry, you're looking at me like explain what. So--

A Yeah.

Q Oh, okay.

A I thought that was pretty clear.

Q So--well, sometimes--I'll stand on that and move on to something else.

What involvement, if at all, did UIH have in the commenting on language in the franchise application?

A We--our principal involvement was with the key components that supported the application, and that at the time, of course, being the financial plan. A lot of what went into the proposal was--whether boiler plate is the proper word, but it was simply defining what we were going to do and how we were going to do it and when we were going to do it. And to the extent that we contributed to that, we weren't the lead component or the one responsible for wrapping the whole proposal together. There were just the key pieces to it that we

were principally interested in. And at that moment, of course, as I said, it was the financial plan.

Q Okay. That's--I understand what you're saying. Let me show you an exhibit, which is--

A Is that one I have here?

Q It should be. It's 386, and it should be--

MR. CHASE: Skip over 3.

MR. WILSON: Pardon me?

MR. CHASE: I said skip over 3.

Q (by Mr. Wilson) Yeah, it should be about--that's what I was going to say. It's about the fourth one down in your pile, I believe.

A Okay. Are we going to use these?

Q Yeah, why don't you just set those aside. I think not.

A Okay. Got it.

Q Okay. And this is a memo, dated August 24, 1992, to Mr. Steve Moss from Melvyn Sears, and copies to Mr. Ng, Mr. Lam and Mr. Williams. It says, "Please find enclosed my first draft summary of the construction strategy and its implications on business planning. I suggest we gather comments and aim to enrich and improve over the next week." And it's signed "Melvyn Sears."

Is this--what, if anything, do you recall about UIH commenting on construction strategy for the bid and its implications on business planning?

A I don't know that I recall anything specific. I mean, these were ongoing discussions about approaches that we would use with respect to how we were going to wire the buildings, what portion of the network was going to be fiber, where the transmitters were going to be located, how many transmitters. If I recall, the initial design called for considerably more transmitters, which were costly items, than what we--with what we ended up with as we massaged the design.

So this is just--from my quick review here, just one of many documents that were exchanged as we went through the process, and this was also part of Melvyn's sharing of information with Steve as he took on some of the, if I might call them, the political activities with respect to the government.

Q All right. Let's go to Exhibit 375, which unless I'm mistaken, is one of the documents I just skipped over in your pile. It's a memo from you to Mr. Ng and Mr. Fung, dated August 21, 1992. Do you see that one? It should be 375 down at the bottom, also 2641.

A It's the one that's on the screen?

Q Yes, sir.

A I don't see it here. Oh, here it is. We hadn't skipped over it yet. Okay.

Q Oh, okay.

A It's the next one.

Q Did you find that one?

A Yeah. Yes, sir.

Q All right. And this is a memo that you sent to Mr. Ng and Mr. Fung in August of 1992?

A Yes.

Q All right. Now, this says, "Now that we have a financial plan in hand to review and massage, it would be interesting to see if the key hardware deliveries, head-in, transmitters, receivers, converters can be negotiated to support our July launch date." And that's what you were talking about a few minutes ago, correct?

A Yes, sir.

Q All right. And what this talks about is that--I'll go down to the second bullet point down here, No. 2. It says, "Initial shipment of receivers will be required in April, 1993, with a monthly delivery of approximately 25 per month through December, 1993, moving to 95 per month January through November, 1994." And then it says, "Converter deliveries"--this is the next paragraph here--"will be required around May, June, 1993, commencing with the shipment of approximately 30,000 units followed by an average shipment of 20,000 per month in 1994."

And then the memo continues to talk about down in the bottom paragraph, "If we assume hardware can be procured as required, we must also integrate the tasks of installing the 11 transmitters and sufficient receivers during March, April to allow for some form of network acceptance testing in May." And then talking about the installation of receivers.

What I'd like to do is, based on your prior--if you could, based on your prior experience in cable, give a sense of the scale of the undertaking that you're describing in this memo.

A Well, as I'm sure you covered, this was a very large and certainly the largest cable system that I had been--single network that I've been--had been involved with. And as I mentioned earlier, we had very critical construction dates in an effort to meet--if we were going to meet the June or July launch date.

And these items that I've--that I've identified and now recall were critical path items that, in my experience, were those that would often hold up and delay the actual construction internalin (sic) of a network. And if we were to fail on these key items and without proper coordination with the vendors, the converter, supplier and the transmitter and receiver supplier, we weren't going to have a chance to even come close to meeting the launch date.

Q What, if any, relationship was there between what you just described and the work that you were doing on--in the fall of 1992 as leader of the implementation team?

A Would you say it again?

Q Yeah, what was the relationship of what you just described about these critical path items and the work that you did as leader of the implementation team later in the fall of 1992?

A Well, this is precisely one of many things that we did to guide the overall direction of the project and to identify for Wharf what we felt were the vulnerable parts of the schedule and the network build.

Q And what, if any, impact did you have in remedying those areas that you've just described?

A Well, I'd like to think that rather than remedies, we raised these key issues so that they did not become problems, was the strategy we were using, and as we went through these issues, as well as others, just to put them on the table at the various operation meetings we had to make sure people were aware of the critical path items that we had to follow.

Q All right. I'd like to go to another exhibit, and this is 1004. It should be next in your stack. It's a memo from Bill Pittman and Steve Moss to Mike Fries, Dave D'Ottavio, Mark Booth, dated February 1, 1993. Do you have that one?

A Yeah, that was one we passed over, so we're going back to this, yeah.

Q Yeah, I'm sorry.

A Okay.

Q I'm being less efficient than I'd like here.

A Got it.

Q All right. What I'd like to do is skip through the first couple of pages, and if you look at the page that's numbered, I think it's 135-3, as a Wharf Cable--it says, "Notes of weekly coordination meeting, January 20, 1993." And it lists various attendees, including yourself, Mr. Blackman, Mr. Ng and others.

What were these weekly coordination meetings?

A Well, precisely that. It brought together the key members of the total team on a weekly basis, just to report on progress, report on problems, new problems. Each person was assigned responsibilities for the items, and at the following meeting was responsible for and accountable for reporting on that item.

Q All right. Let's go to Page 135-5, which is just a couple of pages in here--critical paths. It's "Cable Operations, Critical Path." A critical path for network to be submitted by the end of January. A critical path mark in customer service under preparation will be submitted ASAP. And then it has a BP out by the side of that under "Action."

Who is BP?

A That's me.

Q All right. And this would be--and then if you go down a little bit further in this, "There are three or four candidates that have been interviewed for the position of marketing director. A decision is to be made shortly." It has "SN and BP." "Two candidates have been short listed for SMS manager, will be invited at the interview." And "HK." It's got "BP." "Recruitment for managerial positions and materials, management and billing access is underway."

Under "GT, supervision, " that would be Mr. Taylor--GT?
A Yes, sir.

Q And that's "BP." "The need to recruit local executives for cable operations was clearly identified. BP to action."

"Network architecture, GT will provide an update on his return," and that's another action item for you.

And then on the next page, "Public Housing Proposal." Various things. Action item, "SN, BP."

"Network roll-out plan. GT to report on progress upon his return."

Another action item for you.

Are these--are these typical of the action items that you were describing earlier on these--

A Yes, sir.

Q --from these coordination meeting notes?

A Yes.

Q Do you recall for what period of time you had these coordination meetings?

A I believe they started not too long after--this one is dated February, but the--to my recollection, they had been going on for sometime and not too long after submittal of the proposal. We may not have called them--they may have taken on a formal name later, but there were regular meetings that would be called. And it may have been sometime later, maybe in the November, December time frame that they took on this official--more official role by meeting on a fixed day weekly, and minutes were put out, and actions were taken and distributed--

Q And when you--

A --the best I can recall.

Q When you were attending these Wharf Cable coordination meetings in the fall of 1992 and into 1993, who was your employer?

A UIH. I was just on assignment at Wharf.

Q Okay. Let's switch to another subject. We're now back after the bid goes in, in the October, 1992, time frame. What, if any--what, if any, role did Mr. Blake Williams have in connection with the Wharf Cable project at that time?

A Well, he was the lead person from my perspective on how we were going to approach the network design because that was in sort of an evolutionary process. He was working postal work, and prior to the formalization of our role there, my role there, which brought Blake--Mr. Williams and Mr. Moss with me. It was the whole set of issues that centered around network design, of which Blake played a key role--

Q Okay.

A --with Melvyn.

Q How about Mr. Moss? What involvement, if any, did he have in the Wharf Cable project in the post-bid time frame?

A Well, he continued to stay involved in the shaping of the business plan. I mean, that was a major--that was a major task because there were a number of things here that we all had to work on as a team, and Steve was key to leading that, along with Emil.

Q And that would be Mr. Fung?

A Yes.

Q Okay. And how about--how about--I'm going to come back to Mr. Moss in a minute, but how about Ms. Sonjia Norman? What, if any, role did she have in connection with the Wharf Cable project in the fall of 1992?

A Ms. Norman was--she was a local lady that we had hired in Hong Kong to give us--she had a legal background, and basically to give us advice and counsel on the local rules and regulations. I mean, it was a legal perspective that she brought to the party.

Q All right. Let's look at Exhibit 321.

A Can you help me on where that is in my pile here?

Q It should be about three or four documents in. I skipped over a couple. I apologize I'm doing this to you. I should have put them in a notebook if I thought I was going to do this.

A I got it. Okay.

Q All right.

A Are we going to come back to these?

Q I think we probably will, so just--but let's stick on 321 right now.

First of all, whose handwriting is on the first page of 321?

A That's mine.

Q And could you read that for us?

A It's to Colin.

Q That's Mr. Blackman?

A Yes.

Q All right. And what does it say?

A "Sonjia's comments regarding the latest draft for your comment"--"for your consideration," I'm sorry.

Q And that's signed--that's signed by you?

A Signed "Bill," yes.

Q And then attached we have a document, "The Carriage of Star T.V. Subscription Channels," and there's handwriting on that. Do you recognize that as Ms. Norman's handwriting?

A Yes, I would say. It's going back a ways, but it's a good guess.

Q Okay. Let's move on to another--another exhibit--well, in a minute. But, first of all, did Ms.--to your recollection, what, if any, other interaction did Ms. Norman have with Mr. Blackman and the Wharf Legal team?

A Colin would probably be a better judge on that. I know that at somewhere--

Q He doesn't want to testify.

A I mean, during this time, it wasn't a particularly structured environment that we were working in. There were lots of issues that had legal ramifications that came up. And Sonjia was my resource with respect to those issues. So anything that had legal content to it would have necessitated Sonjia spending time with Colin.

One key thing that came up as a part of these vendor issues we were talking about earlier was the drafting of the purchasing agreements and suitable language there. And as I recall, somewhere in Sonjia's background, she had that experience, and there was considerable time spent drafting those contracts and those purchasing documents that Sonjia--

Q Contracts with whom?

A Our sub-vendors.

Q And contracts with whom on the other side of the transaction?

A Who the sub-vendors were?

Q No, no. I mean, contracts between sub-vendors and who?

A And Wharf Cable.

Q And let's turn to Exhibit 262--or pardon me, 762, which should be the next one in your pile.

A Yes.

Q And this is a memo, dated 16th November, 1992, to Mr. Bateson and Mr. Hickerson, a copy to you from Sonjia Norman, Re: DEC contract." And she says, "I am currently making the amendments to the master agreement and schedule of our initial draft of the contracts, which are not substantive and which simply incorporate the wording used by DEC."

And then she goes down, and she makes various comments on this contract.

First of all, what was DEC? Excuse me.

A They were the vendor that we--one of the vendors that we were negotiating with for the subscriber management system.

Q And so Ms. Norman was working on contract drafts for that piece of--

A That--this and others, yes.

Q And while she was working on these contracts between vendors and Wharf Cable, who was her employer?

A UIH.

Q And who was paying her salary?

A UIH.

Q Let's--I'm going to move you forward in time to February of 1993, and you've testified previously that Mr. Keefe had assumed the cable operations--permanent cable operations, a director position at that time.

A That's correct.

Q And how, if at all, did your role with respect to the Wharf Cable project continue after Mr. Keefe's arrival?

A Well, it effectively ended with David's arrival, but as a practical matter, there were lots of things going on, and Mr. Keefe had just hit the ground. So I had put in place, or at least collected, knowing that this was going to happen, shaped things to ease the transition from the things that I had become involved in in the position so that we could smooth the handoff to David.

Quite frankly, because of the dynamics of the project, it took a bit longer than I thought and one would typically think. So there was no immediate disengagement, and so we basically had two people filling the position for a good while, certainly David being the lead person.

But I would say it probably took--upon his arrival, there were probably six or eight weeks of fairly intense working together on a full-time basis handing off, so to speak.

Q Okay. And then did you also continue work after that period of time on the Wharf Cable project, or did your work cease?

A Oh, no, it continued. It was a very critical period.

Q Okay. What interaction, if any, did you have with Mr. Keefe after this transition period that you described for us?

A Well, I was always available to him at that point as a resource. It began to decline in frequency and intensity as he took charge of the project, but we continued to work together as a team, me and his shadow basically, as a resource to do things.

Q And what types of things were you doing during the winter and spring of 1993 in connection with the Wharf Cable project?

A Well, it still centered on the detailed implementation and scheduling of the project. We still had major procurements. I couldn't tell you the actual timing and placement of the orders that started the shops running for the decoders and the transmitters and the receivers, but they remained critical path items and critical to the success of the network.

And I would do--I mean, my role, then, really became--I was David's grunt, and I would do those things, being mindful that this project was expanding very rapidly. I mean, even though we didn't have the award, we were behaving as if we did. And there were not--the usual resources that might be available in a large, established company weren't necessarily available to us. So we all did things that were not necessarily chief operating officer stuff, and that was my role with David after he got established.

Q Okay. What role, if any, during--did you have during that time frame on the issue of recruiting?

A I stayed very much involved in that because that was not the easiest thing to disengage from. I had talked to a number of the people that were being recruited and were promising candidates to relieve David of some of that. The key positions at that time, the most critical ones had been filled. We were still faced with the decision of how we'd commit to--or the timing of committing to some of these first-tier management positions or second-tier management positions, given that we, indeed, did not have the franchise in hand.

So that gets back to the same kinds of decisions we had to make earlier, when do you do it--when do you have to do it in order to make sure you meet the schedule commitments.

Q All right. I want to switch topics again and talk--go back and talk about Mr. Williams and Mr. Moss. After Mr. Keefe's arrival, did Mr. Williams and Mr. Moss continue their work on the Wharf Cable project or did they start doing different things?

A No, it just continued to become more intense--

Q Okay.

A --if that was possible.

Q And during the, let's say the January through--the January, 1993, time frame through the end of March, under whose employ were Mr. Williams and Mr. Moss?

A What were the times again?

Q January, 1993, through the end of March, 1993. Who were Mr. Moss and Mr. Williams working for?

A They were still with UIH at that time.

Q All right. Did there come a time when they left their employment with UIH?

A Yes, they did.

Q All right. What role, if any, did you play in that? First of all, who did they--to whose employ--to whose employment did they enter?

A Wharf's.

Q All right. What rōle, if any, did you play in transitioning Mr. Williams and Mr. Moss from employment at UIH to employment at Wharf?

A Well, initially, it was a reluctant one because I was losing two of my key people.

Q All right. How did the situation come up?

A But it was sensible and the needs were so urgent in those positions to be filled, and given that that was a relatively easy transition because these guys, of course, had been emersed in

the project for several months, that it was sensible, given that Wharf was interested and David was interested to have experienced people, that they transfer their employment from UIH to permanent employees with Wharf.

Q Did you have conversations with anybody at Wharf regarding that subject?

A I can't think of anything specific, but certainly the idea was being floated around. I mean, I was aware that they were interested in those talents, and I don't mean--when I said reluctant, I mean it was obvious that there was an important need there, and those guys should--if Wharf was--wanted them, that I would let them go--we would let them go.

Q Did you discuss the change in employment with Mr. Williams and Mr. Moss?

A Yes.

Q Tell me about those discussions.

A Awkward.

Q Okay.

A I mean, they were torn, too, between the jobs that they had been involved in on an ongoing basis before coming emersed in the Wharf project, but clearly they saw that this was a challenging opportunity, and after some, but short discussions, I think they thought it was a terrific thing--terrific opportunity to take advantage of.

Q Okay. What I'd like to do now is, again, to go to another topic and talk about NYNEX for a little bit. And what I'd like to ask you is, in your--at the time that you were serving as the

head of the implementation team at Wharf Cable, what role, if any, did NYNEX have in the implementation of the Wharf Cable system?

A None.

Q Okay. Did you have any contact with NYNEX people at all?

A Only occasionally because that really was outside of what I was supposed to be worried about. I mean, I was aware that they were likely to be shareholders, along with UIH, but I was not directly involved. I would say I was more tangentially involved in things that were going on. I would attend meetings, for instance, when other parties maybe were not there. Blake often attended those meetings. I think at one period there were regular meetings with NYNEX that Blake was the appointed representative there as they were considering their decision.

Q Okay. And what impact--or pardon me. What role, if any, did Mr. Williams have on interface between cable issues and telephone issues?

A Blake could answer that better because--but that was, to my recollection, was pretty limited as well. I mean, the consideration at one point, and I don't know exactly when that was, in the summer and fall of '92, but the consideration was how do we build a network that would serve both the telephony piece as well as the cable television piece so that you didn't have to duplicate network; albeit that the television franchise, so to speak, if that's what it was going to be called, was a completely separate entity from what we were bidding on.

Q All right. Explain that, please.

A Well, we were bidding on a cable television network to be built in Hong Kong, and apparently at sometime in the not too distant future, the Hong Kong telephone system I presume was to be privatized. And it may well have been at the suggestion of the government to consider a single network that would serve both franchises if they were to be awarded.

Q Okay. But other than the possibility of sharing network, what, if any, relationship was there between the cable project and the telephone project?

MR. BAUER: Objection, leading, Your Honor.

THE COURT: Overruled.

THE WITNESS: None.

Q (by Mr. Wilson) At the time that you were acting as--pardon me. At the time that you headed the--I'm having a hard time today. At the time you led the implementation team for Wharf Cable, what role, if any, did NYNEX play in your day-to-day responsibilities?

A None.

Q I want to go in the few minutes that we have here before the break to a chart that Wharf prepared for the purposes of this lawsuit, and this is 1701. And this is basically a whole bunch of companies that they say were, you know--

A Do I have that? Excuse me. Do I have that here?

Q No, just--you're going to have to look at this on the screen, I believe. These are a whole bunch of companies that they say were sources of expertise available to them, and I'm

Excerpt from Direct Examination of P. Case

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U.S. District Court for the District of Colorado

(Aplt. App. 5140-5199; Transcript 2983-3042)

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Q And, what did you do in that capacity?

A I designed and built computer systems.

Q What kinds of computer systems?

A Accounting systems, restaurant control systems. I built a process control system for a couple of our food plants and a bunch of other systems.

Q For how long were you with Mr. Steak?

A I left Mr. Steak in 1983. I had been promoted to be the VP of data processing there in 1979 and I left in 1983.

Q All right. In your capacity as VP of data processing, did you work alone or did you supervise people or what?

A I had a staff of about 25 people.

Q After you left Mr. Steak, what did you do?

A I went to work for United Cable Television in Denver.

Q And, what did you do for United Cable?

A I was the VP of MIS for United Cable.

Q And, by VP, you mean vice-president?

A That's correct.

Q What did you do as VP of MIS for United Cable?

A I supervised all of the computer systems for that cable television system.

Q And, what would that involve?

A That would include things like subscriber management systems, accounting systems, billing systems, engineering systems, construction systems, all computerized.

Q And, would that be here in Denver or outside Denver, as well?

A No, the national headquarters was here in Denver, but the company had about a million--1.2 million subscribers operating in approximately, I think, about 25 different locations, but the headquarters was here.

Q And, in your capacity of running the MIS function for United Cable, did you work by yourself or did you supervise people?

A I had a staff of about 40 people there.

Q Now, we're already using jargon here and the examination is only a few minutes old. What is MIS?

A MIS is a business term that in this country stands for Management Information Systems or Management Information Services. It generally means all the computer systems of a particular business.

Q Now, during the time that you were working with United Cable in this MIS function, what, if anything, was the

reputation of United Cable in the cable television industry on matters with respect to MIS?

A It was quite bad to begin with, but we ultimately established the organization as the preeminent MIS organization in the cable television industry in the U. S.

Q Why? Why did United Cable have that reputation?

A We did a number of unique things there including building some internal technology that made the computers run faster. We also were the first cable television company to standardize on a single subscriber management and billing system vendor. We also completely replaced the accounting system and we tied all these systems together in such a way that information was only captured one time inside the system and we were able to use it throughout the corporation.

Q Okay. Now, you mentioned working with a single vendor. I'm sorry, I missed what you said. Who was that vendor and what was that about?

A The vendor that we standardized on for subscriber management and billing was CableData. And, no other large cable television operation that ran multiple cable systems had ever decided to put all of their cable television subscribers into the hands of a single vendor. It was considered something that was quite dangerous to put all of your eggs in one basket. The subscriber management and billing system really is the central nervous system of any cable television organization and it was considered to be quite unusual not to spread the risk of that system across multiple vendors.

Q I want to come back in a few minutes and talk about in detail what a subscriber management and billing system is and what it does and all that type of stuff. But, why don't we for

the moment go forward with the things that you did before you worked on the Wharf Cable project. And, did you stay at United Cable forever or did you ultimately leave United Cable?

A Well, United Cable was merged with two other companies, United Artists Entertainment and Daniels Cable, to create a single entity. The name of that entity was United Artists Entertainment. So, the company was wholly absorbed or merged into United Artists Entertainment in 1988.

Q And what, if any, position did you have with UAE, as we'll call it?

A I was the vice-president of information services for all of United Artists Entertainment and I was responsible for all the information technology across their studios. They were the largest theatrical film chain in the world at that point in time with over 3,000 screens, and we had almost 3 million cable television subscribers.

Q And, how many people, if any, did you supervise in that position?

A In excess of 150.

Q All right. And, did you stay with UAE or did you ultimately do something different?

A I left United Artists Entertainment in November of 1990 to start my own consulting company specializing in information technology to the multi-channel pay television industry.

Q And, what was the name of that company?

A Caspen Incorporated.

Q And, how is the Caspen derived?

A It's a combination of my name and my partner's name whose name was Wes Pennington. So, we just took the first three letters of our last names.

Q All right. And, who were some Caspen clients?

A We worked for 20th Century Fox, Newscorp, UIH, TCI, U.S. West, Secagraphics, CableData, Digital, and a number of other cable television ventures around the world.

Q All right. What was your relationship with UIH during the, let's say, 1991 to 1994 time frame?

A UIH contracted with my company to have us manage the information technology function inside the entire organization at UIH.

Q Did you have a title with UIH?

A Yes, I did. I carried their card as their VP of MIS.

Q All right. And, what were your duties as VP of MIS for UIH?

A I was responsible for all of the computer systems at UIH, both internal and external. And, by that, I mean internal means our own corporate use; external means information technology systems used in the various properties in which UIH was an owner or an investor.

Q How long did you stay in that position?

A I stayed there until April of 1996.

Q What did you do then?

A I today have a television network venture called Interactive Television Network, Incorporated.

Q And, what does ITN do?

A We create a television channel that allows people to participate with programming. For example, playing along with Jeopardy or playing a game of cards or doing computerized Guess the Next Play, an NFL game; those sorts of things.

Q All right. And, before we start talking about things other than your background here, what, if any, boards do you serve on?

A Today, I'm a director of a company called Wistech Technologies. It's an Israeli company traded on the NASDAQ. I'm also a director of Logicom International which is a privately held software development company. I am the chairman of the board of Interactive Television Network. My consulting company is still alive, although I have a very small select group of friends that we still help whenever they need some help.

Q All right. Have you been involved with MIS work of any kind on a board basis?

A The Wistech Technologies is a subscriber management and billing company that vends products throughout the world. So, that's an MIS company.

Q And what, if any, involvement have you had with a venture called Colorado Open Systems Consortium?

A Colorado Open Systems Consortium is a non-profit organization and I and two other individuals started to promote economic development in the state of Colorado. It's now the largest information technology organizations in the state of Colorado, and I served as its chairman from 1993 to 1995.

Q All right. Let's turn to another topic. Subscriber management and billing system, what is it and what does it do?

A As I stated earlier, there are lots of different computer systems that are used in a cable television environment, but the subscriber management and billing system, if you think about all of the computing that's done in a cable television organization, approximately 95% of it is done by the subscriber management and billing system. This system is responsible for all aspects of controlling customers and issuing bills. In a well-run system, it becomes--in a well-run cable television system, it becomes the central nervous system of the entire organization. It is the thing that if you are a subscriber of TCI here in Denver and you pick up the telephone and you order a Pay-Per-View movie, the telephone system is answered by part of the subscriber--by an ARU system. Let me explain what that means.

Q Please do?

A By an Automated Response Unit, a telephonic system, which is directly connected to several computer systems that turns on the movie that you buy in your home instantaneously. And, all of that has to happen in less than a second if you order a Pay-Per-View movie. So, that's an example of one of the functions that it performs. It also schedules all of the technicians as they go around and do their work every day. It takes care of any payments that you would make on your account. It charges you appropriately depending upon what services you have. If you order HBO, for example, and you

order Showtime, you might get a different price than if you ordered HBO and Cinemax. All of the mechanics of running the entire organization are controlled by the subscriber management system in a well-run organization.

Q Okay. And, just to give the jury and His Honor a size just of the complexity of this system, first of all, let's talk about a typical word processing program or something--a piece of software that would be more commonly in use. How, if at all, in size does that type of program compare to the subscriber management and billing system?

A In a relatively sophisticated word processing program, something like Microsoft Word, there might be on the order of 50,000 lines of computer code to generate that system. Each one of those lines is a series of instructions to the computer telling it what to do. A computer really is nothing more than a robot with lightening fast reflexes. You just tell it what to do and it does it. Subscriber management and billing system--and the systems vary depending in terms of their functionality--can have upwards of 3 million lines of code. So, it can be 60 times larger than, say, a standard word processing program.

Q Okay. Let's talk about selecting an SMBS system for a cable television network. What impact, if any, does selecting the right SMBS system have in the operations of the cable television system?

A Well, it's critically important if you ever hope to make your business plan projections. At UIH where the company has a philosophy of, let's say, run the operation at the highest possible level of efficiency, the subscriber management system is placed in the center of all operations. If you get that long, then you spend most of your life recovering from the damage that the system does for you. It can actually work against you--

Q Okay. Let's slow down a little bit and explain that. How would it work against you if you get the wrong system?

A Let's take an example of you decide that you want to make a promotion. You want to tell subscribers, oh, gee, if you sign up this month, your installation will be free and you'll get the next two Pay-Per-View events for free. There are subscriber management and billing systems that have that kind of functionality built into it so that you can just, quite frankly, set that up and tell the computer to do that. Or, if you select the wrong system, that might require 30 clerks working day and night for two months in order to process that kind of work. That's an example of the kinds of capabilities that might exist in one system and might not exist in another.

Q All right. Let's stick with that for a minute. You mentioned that the subscriber management and billing system can actually save manpower. Is that correct?

A Yeah, that's correct.

Q Explain that a little bit more in detail?

A Okay. Well, I'll just pick one particular area and that is the area of manpower scheduling. The way that a typical subscriber management and billing system works is that you tell the system which people will be working. The system knows the capabilities of those people and you essentially feed in their schedule. You might say that John Jones who is a junior installer will be working 30 hours this week, and Bob Smith who is a senior installer will be working 40 hours. The system knows how much work those people can do because it's tracked their performance over time. And, now, when you input that schedule of who will work, when the next person calls up and says, gee, I would like to order cable television, the computer system looks at the schedules and it says, gee, he

right kind of person with the right kind of skills is Bob Jones. Bob Jones has all of his work scheduled until next Friday. The first time that we can order him--the first time that we can install him is next Friday and it will tell the customer service representative, the person that you call on the phone, that, okay, the first time that we can install you is next Friday. The amount of work that it manages, of course, grows exponentially depending upon the size of the cable system because instead of just Bob Jones and Mark Smith or whoever is installers, you might have 500 people and 500 schedules. And, all of you who may have been disappointed by your cable television installer not showing up, those kinds of systems are used to prevent those kinds of things from happening.

Q Okay. What difference, if any, does it make if you get a subscriber management and billing system for a lower price as opposed to a higher price? How does that impact the cable system?

A Well, buying a subscriber management system is a very expensive process. These systems generally have a tremendous amount of computer hardware behind them which you have to buy up front or lease up front. So, you're making an enormous capital expenditure, usually multi-million dollar capital expenditure. Then, you're paying license fees for the software. So, it's a lot of cash out of your pocket up front, and then typically the way that these systems are sold is that they charge you so many pennies per subscriber per month or dimes per subscriber per month in order to license that software. And, they count how many subscribers you have every month, multiply it by some number, and send you a bill. And, that number can be anywhere from, say, 20 U. S. cents to 50 U. S. cents per subscriber per month that you're paying to the software company. So, it's a material part of your capital expenditures budget.

Q All right. Let's talk about the experience that you had in working in subscriber management and billing systems prior to the time that you began work on the Wharf Cable project. We've focused on places where you worked. Now, I kind of want to focus a bit on what you did. First of all, prior to fall of 1992, what experience, if any, had you had in negotiating contracts for subscriber management and billing systems?

A That was a material part of my job at United Cable, at United Artists, and working for UIH in the various properties that I was involved with. UIH was growing very rapidly during those years. So, we were acquiring lots of subscriber management systems at that point in time.

Q Do you recall approximately how many subscriber management and billing system contracts you'd negotiated by the fall of 1992?

A At least 10.

Q Okay. And, with which vendors or software suppliers had you worked in the context of these negotiations?

A I probably worked with 10 major vendors; CableData, Digital Equipment Corporation, ISD, Toner, Computer Utilities of the Ozarks. Let's see, oh, geez--

Q If you can't think of any others offhand, that's fine.

A Okay.

Q All right. Let's talk about CableData for a minute. Prior to the fall of 1992, had you had prior interaction with CableData?

A Yes, I worked as a consultant for CableData. They had asked my consulting organization to do some work evaluating their product relative to the international marketplace.

Q Okay. Had you used CableData's--had you or the companies you worked for used CableData product in any particular markets?

A Certainly, in the United States, both at United Cable and United Artists, we were big CableData users. So, in both of those markets, the CableData software was controlling the subscriber management and billing function for over 3 million subscribers. I worked in the U.K. in Malta, in Norway, Sweden, Israel, Taiwan. Those are the ones that come in my head immediately where I'd encountered--worked with CableData software on the end user side.

Q And, those are all UIH projects that you just described?

A Yes.

Q Okay. And what, if any, involvement have you had in the CableData Users Group?

A I founded the CableData Users Group along with two other people in about 1986, and that organization continues to this day. It's the primary input vehicle for changing a product for CableData in the domestic marketplace.

Q Okay. As of the fall of 1992, what, if any, prior relationship had you had with the principals of CableData?

A I certainly worked closely with the president of the company, the VP of software engineering, the head of marketing. All of these people were people that I had worked so extensively with that I had personal relationships with them.

We would go skiing. We would, you know--they would invite me to social functions. I went to several weddings. So, I knew them quite well.

Q And, who was the VP of Marketing that you referred to?

A Bob Crowley.

Q And what, if any, prior relationship have you had with a gentleman named Martin Lewis?

A Martin Lewis was the head for a time of the CableData International and was the head of sales for CableData International and is today the head of sales for CableData International.

Q And, where is CableData based as opposed to CableData International?

A CableData is based in Sacramento, California. International is based in Farnborough, England.

Q All right. You mentioned a company called Digital Equipment or DEC. Let's talk about the same thing. Prior to the fall of 1992, what previous interaction had you had with DEC?

A I again had consulted for DEC. I'd done strategic consulting with their cable television business unit. Digital was interested in building products in the cable television marketplace and I did strategic consulting work for them suggesting that they build specific products; some of which they built, some of which they did not. I also did work for the Israeli unit of Digital which was called DECSUS and that company held the rights to the Wizard subscriber management and billing product.

Q And, what's that company called today?

A It's called Wistech Technologies.

Q And, that's the company that you now sit on the board of?

A I do.

Q When did you become a board member?

A Last year when they went public.

Q And, did you use Digital equipment product from an end user standpoint prior to the fall of 1992?

A UIH had installed and selected the Wizard product for its operation in Malta. So, I was involved with the selection there and also the installation of the product.

Q What, if any, relationships prior to the fall of 1992 had you had with the principals of DEC?

A I had not--I do know the people who are the head of the DECSUS subsidiary in Israel. Digital itself is a $14 billion corporation and I don't have any relationships with the people at the U. S. headquarters.

Q All right. I asked a bad question. Let's focus on the subsidiary in Israel.

A Okay.

Q What prior relationships had you had with those folks as of the fall of 1992?

A I'd one strategic product work on consulting work on their product, the Wizard product. They had asked me to assist them in determining what features would need to be added to that product in order for them to sell it here in the United States and also how the product stacked up against other products in the international marketplace.

Q And, as with the folks at CableData, had you gotten to know the people at Dec Israel on a personal basis?

A Yes.

Q And, who would those people be, for example?

A Mr. Shi Balas was the head of the company at that point in time. Manacom Shalgi was the VP of Sales. Zica Zazurda was the chief sales person for Europe. All of those people were people that I knew. Still know.

Q Okay. I want to shift over to the Wharf Cable project. And, I guess, the documents in front of you, the pile looks more intimidating than it is because some of the documents are thick. I'm only going to have a couple of questions regarding them. But, the first one in the pile should be Exhibit 356 and this is a document dated August 16, 1992 from you to Steve Moss, a guest in the hotel in the Hong Kong Island Shangri-LA Hotel. And, you say, "As requested, I've reviewed the Wharf Cable subscriber management proposal documents that you faxed to me on 7 August." Why did you do that?

A UIH had told me that my help would be necessary in Hong Kong, that they had become involved in that project, and that my assistance was going to be required in terms of evaluating the computer systems in Hong Kong.

Q Okay. And, like I said, my questions were short on that document. So, let's go on to another one. Let's look at # 282. This is a document that says Wharf Cable subscriber management system. It says, "The following requests for proposal were sent to prospective vendors for subscriber management system on 13 July 1992 to update the RFP issued on 20 November 1991." "And, there's a note which says, "Paul"-- is that you?

A That is me.

Q "The RFP I referenced in my fax of September 7. Thanks for your assistance." And, it's signed Bill. Do you recognize that to be Bill Pittman?

A Yes, it is.

Q He's now off getting his teeth fixed. Anyway, what's a request for proposal?

A Request for proposal is an invitation to selected vendors to send a proposal for a particular product. It would be something like raw cable, it could be converters, it could be computer systems. This one happened to be for a computer system.

Q Okay. What evaluation, if any, did you make of this request for proposal?

A I read it. I reviewed it to understand the level of detail with which Wharf had requested proposals from various vendors.

Q What evaluation did you make, if any?

A The proposal is not bad. It's a proposal that lists various functional elements of a subscriber management system. However, the proposal is missing some key pieces of

functionality that one would normally ask about in a request for proposal.

Q Explain that, please?

A Okay. An example of a piece of functionality that one might ask about, I don't want to get too tedious here, but if you make a payment, a partial payment on your account, the computer system has to decide who to pay. Let's say, for example, that you owe the cable company $25 and you send in $20, one of the questions that the computer system has to figure out, well, if I only got part of this money, do I pay all of CNN's bill, do I pay 20/25 of it, do I pay HBO first? And, all of those kinds of things in a good subscriber management system are part of the foundation level of the system, and so there aren't questions about things like that. There are questions about taxes which are typically something that one needs to deal with. There also are not questions that reflect a general understanding of the architectural differences of the various systems. And, by that, I mean the way that data is stored in the system which gives the system its basic capabilities. There were no questions, for example, in the Pay-Per-View section about security for Pay-Per-View. For example, can you prevent your child from ordering an R movie. You don't want any R movies shown in your house or X movies shown in your house. Do you take a PIN number, personal identification number, if somebody tries to order a Pay-Per-View event. There are a number of things that made this document look like it was really a list from the specification sheets of those products and it didn't reflect a general understanding of how you construct one of these products, subscriber management and billing product, and what it's capabilities are.

Q Okay. Now, you just talked about constructing the product.

A Uh-huh.

Q What do you mean by that?

A A subscriber management and billing system is basically--you can think of it like a car, if you will. If this is too simplistic, let me know. But, if you do into any salesman's showroom and you ask them to buy a car and you ask them if it does this, this, this, and this, you got to the Ford dealer, the Chevy dealer, and the Toyota dealer, they're all going to tell you yes. But, how do you really understand underneath what the capabilities of that car are? What are its strengths and weaknesses? What is the reliability of the car? What would happen--can you take it off the road? All of those kinds of things you learn from working with these products for an extensive period of time. And, you also learn what the vendors capabilities are, what their reputation is, whether or not they deliver what--typically, these systems need to be modified in some way or customized and those customizations, certain vendors have more capabilities than other companies have.

Q Okay. And, at the time of this request for--first of all, do you know to whom this request for proposal was issued?

A I do not.

Q Do you know anybody who it was issued to?

A I do know who responded to it.

Q All right. Who responded to the RFP?

A According to the documents that I got from Wharf, CableData responded, Digital responded, EDS responded, and News Datacom responded to this document.

Q And, CableData and EDS are two of the companies we've talked about that you've worked with previously?

A Yes.

Q Okay. Moving on to another document here, this is a thick document, but it has a cover page on it and it's a routing memo from a guy named--well, actually, from Stephen Ng to Simon Yu and it says, "Please review these documents. You need to stay close on this. Estimate U.S. 9 million for the first five years." And, in the sort of backwards English dating system or forwards--backwards American system column, we've got July 8, 1992. Then, attached to that is a Wharf Cable SMS evaluation, Volume I. Could you tell us, please, whether paying $9 million for a subscriber management and billing system is a good thing, bad thing, or indifferent?

MR. TULLY: Your Honor, I hate to interrupt. I have to object to the lack of foundation. We've talked about a number of different systems. That question has no basis in any sort of specificity.

THE COURT: All right.

MR. WILSON: All right. I'll make it more specific.

MR. TULLY: Or time for that matter.

Q (by Mr. Wilson) As of summer and fall of 1992, if you're going to be ordering a subscriber management and billing system for a cable television venture in Hong Kong, what view, if any, do you have as to whether paying $9 million over five years is good, bad, or indifferent?

A Well, the amount of money that one pays is related to a number of factors, but taking those factors into consideration,

including the size of the operation, the number of modifications that would need to be made to the software, I thought that number was high.

Q Okay. And, why did you think it was high?

A I had negotiated a number of contracts. It was relatively easy once I got the number of subscribers per year and saw the RFP and what was being requested of the vendors to--how they were being asked to modify their software or to adapt it to the Hong Kong operation. It seemed to be high by at least 25% at a minimum.

Q All right. And, did you become familiar with a company called COL?

A I was introduced to COL when I first arrived in Hong Kong in September of 1992.

Q And, what did you learn, if anything, when you arrived in Hong Kong in September of 1992 about the prior experience of COL in cable computing?

A COL, I met a very nice gentleman by the name of Norris Hickerson who was the person from COL who was working on the Wharf Cable account. COL, as explained to me, was a subsidiary of Wharf Holdings and provided services to Wharf and other customers. They really didn't have any specific experience in the cable television marketplace in an operating cable television environment.

Q Okay. Switch over here to another document and this one is September 7, 1992, Hong Kong visit from MIS, from Mr. Pittman to you. It says, "As I'm sure you know, this request is going to arrive sooner or later. So, here we go. The Wharf team is now starting to seriously focus on evaluation and

selection of their MIS. They are using a local firm as a consultant to assist them in the process, but are not familiar with the needs of the cable network, especially one of this magnitude." So then, he goes on and he says, "So, as usual, the sooner/the better for your visit. Please, let me know by return fax what your schedule might be." Is this the document you received in that time frame?

A Yes.

Q Did you ultimately make a trip to Hong Kong in early--or in the September 1992 time frame?

A I did.

Q What understanding, if any, did you have as to UIH's investment rights at the time you made this trip?

A I was told by Bill Pittman that UIH had reached an agreement to acquire 10% of the Wharf Cable operation for, I believe he said, $60 million, but it might have been $50 million.

Q Okay. And, at the time that you arrived in Hong Kong in the September 1992 time frame, what was the situation as to how various people at Wharf were leaning in terms of the selection of an SMBS system for the project?

A I really had only received one document that had some evaluation associated with it. And, it appeared that they had--were leaning towards the Digital product at that point in time primarily because it was the cheapest product and they'd made an attempt to weigh the functionality of the various respondees--CableData, Digital, the folks at News Datacom and also EDS. But, it wasn't a very knowledgeable weighing. They basically looked at the boxes that were checked yes and

counted those us and it looked like to me that was the analysis that they performed.

Q Okay. What, if anything, did you learn about the views of Mr. Frank Bateson as to the appropriate SMBS system to select?

A Mr. Bateson, I did not have very incredibly detailed discussions with Mr. Bateson. But, according to Mr. Hickerson, Mr. Bateson had worked with the CableData product in England when he worked over there and he was a supporter, a fan, of the CableData software.

Q Okay. Mr. Hickerson's view was what?

A Mr. Hickerson's view was that it would be more appropriate to select Digital. His service bureau, Col, was a Digital shop. By that, I mean they had Digital computers that they used to do various sorts of accounting functions and other functions for other customers. So, he was very familiar with the Digital product and he had a good relationship with the local Digital field office. So, he preferred to work with Digital, if possible.

Q What, if anything, did you learn as to whether he was--what specific Digital product that he was leaning towards and whether it was an older product, newer product, or something else?

A I saw in the material that I got that they were looking at the Digital Wizard product, but I understood from Mr. Hickerson that originally they were looking at another Digital product called CTMS sold by a company here in the United States called BSI.

Q Okay. And, what was your reaction as to whether Wharf should go with a CableData product or a Digital Equipment product?

A The most important thing in the subscriber management process is that it is--the entire process has to be fully integrated. Let me explain what I mean by that.

Q Okay.

A You have to select the right product. You have to put together the right contract. You have to pay the right price; a price that ensures that the vendor is making a small profit, enough to keep their attention, but not so much that they go to sleep on you and not so little that they won't pay any attention to you.

Q All right. Let's slow down just for a minute. What do you mean by that last point? You can't pay too--have them pay--or receive too little or otherwise they'll go to sleep. What do you mean by that?

A You can reduce the price to--when you were working with a vendor--to a point where the business is not profitable. And, as a result, they will remove resources from your account. They look at each of their accounts and decide how much money they're making and they make resource allocations based on the profitability of that account. So, it's possible for you to negotiate too good of a price.

Q And, the consequence of that would be what?

A It would--what one would find would be that resources--your calls were not answered as quickly as you hoped. They would not make changes to the software that you requested. You would just be getting the level of service that's

absolutely essential to make these very complicated products work. You always every month, every day, typically are calling the vendor and asking them questions, asking them to fix something, asking them what the capabilities are, what's going to be in the next version of their product, what will happen if you do this. So, you need their help and support throughout the life of the contract.

MR. WILSON: Your Honor, now would be a good time to break if that would be Your Honor's pleasure.

THE COURT: I'll bet you a lot of people would have it pleasurable.

MR. WILSON: Including myself actually.

THE COURT: Okay. Let's come back tomorrow, be ready at 9:00, and drive safely.

(4:39 p.m. - Jury excused.)

THE COURT: We'll be in recess.

* * *

[Testimony Resumed on March 12, 1997; Transcript 3014]

(At 9:05 a. m. on March 12, 1997, in the United States District Court at Denver, Colorado, before the HONORABLE JOHN L. KANE, JR. , U. S. District Judge, with Messrs. Chase and Wilson appearing as counsel for the plaintiffs, and Messrs. Bauer, Jentes, Munson, and Tully appearing as counsel for the defendants, the following proceedings were had:)

THE COURT: Thank you. Be seated, please.

(9:07 a. m. - Jury present)

THE COURT: Go ahead, please?

MR. WILSON: Your Honor, before I begin, Mr. Gilmore yesterday afternoon pointed out a housekeeping matter I need to take care of. I did not identify a couple of exhibits we were dealing with for the record. So, I'm just going to go through that briefly.

THE COURT: All right.

MR. WILSON: Exhibit 431 was the September 7, 1992 memo from Mr. Pittman to Mr. Case. Exhibit 268 was the document with the handwritten memo from Mr. Ng to Mr. Yu about the $9 million price. Exhibit 282 was the Wharf Cable subscriber management system request for proposal with a note from Mr. Pittman and Mr. Case. Finally, Exhibit 356 was Mr. Case's memo to Mr. Moss dated August 16, 1992.

PAUL W. CASE, JR.,

called as a witness on behalf of the plaintiff, having been previously sworn, was further examined and testified as follows:

DIRECT EXAMINATION BY MR. WILSON RESUMES:

Q Welcome back, Mr. Case.

A Good morning.

Q When we left off yesterday, we were talking about Wharf's thoughts on subscriber management and billing system at the time that you arrived in Hong Kong in September of 1992. Do you remember that?

A Yes.

Q And, we talked about that Mr. Bateson was leaning towards the CableData system and that Mr. Hickerson was leaning towards a version of the DEC product.

A That's correct.

Q And, what reaction did you have as to which product or--which of those two products or a different product would be the best for the Wharf Cable system?

A At that point in time, I suppose I need to say that one cannot have an opinion until one understands what the business environment in which the subscriber management system will operate as to which is the appropriate product. So, the purpose of my trip was to determine what the business environment was.

Q And, what did you do to determine the business environment?

A I interviewed the major senior management players at Wharf including Mr. Hickerson, Stephen Ng, Emil Fung, Simon Yu, and I spoke with people in programming and the designees to run the various departments at Wharf.

Q After gathering that information, what opinion, if any, did you form as to the suitability of the CableData product for Wharf Cable?

A I did not feel that would be the most appropriate solution.

Q And, why is that?

A The CableData had to bid a brand new product that was only operating in a single location in the world. The product was called the DDPI product and that product really in my consulting company's intelligence was that that initial test market was not going very well. And, also, I noted that some of the interpretations of the RFP responses were leading Wharf in a direction to believe that that product could do things that it indeed could not do.

Q Explain that?

A For example, as I explained yesterday, the subscriber management system is responsible for controlling the converters, the things that are in your home that actually deliver the signals, whether or not those are Pay-Per-View or HBO. And, the reading of the responses at Wharf had led them to believe that the CableData DDPI product could support the converters of 28 different manufacturers when, in point, that product could really only support two converters.

Q And, what would those be?

A The Jerrold and the Scientific Atlanta converters.

Q Okay. And, you mentioned yesterday about customization of software for particular systems. What impact, if any, did issues of customization play on your opinion as to the suitability of lack thereof of the CableData product?

A CableData Corporation has a reputation of selling a package and doing very little customization to that package. Essentially, when you buy a CableData product, that product--they do not customize that product for individual locations. The Digital Equipment Corporation, the Wizard people, had a reputation of doing lots of customization work. Because the Wharf situation was a very unique,

highly-challenging environment, I believed that after understanding what was going to be attempted in Wharf, the right product would probably be the Digital product for that market.

Q Why does customization make a difference?

A Customization is--if we go back to the analogy that we used yesterday about a car and you want to have a sunroof or heated seats or a bigger engine, et cetera, those things can materially impact the fit of the product. As a matter of fact, they can determine whether or not you will ultimately be successful in installing this software. So, customization was an extremely important issue because the environment at Wharf was very much of a non-standard environment.

Q Based on your conversations with Mr. Hickerson, what awareness, if any, did he have as for the need for customization?

A I have to say that Mr. Hickerson was a very good general data processing person. My consulting company had built--we were considered to be the best in the world in the area of subscriber management and so he was very thankful that we were there to help him sort through these issues. It can be quite an imposing morass for someone who has not done this a number of times to figure out exactly how to manage the acquisition and the installation of a product, the customization of a product, like subscriber management and billing system.

Q All right. I'd like to move to a different exhibit now which is 526 and that should be the next one in the pile that you have.

A I have it.

Q All right. What is Exhibit 526?

A At the end of my first week or I guess it was actually a couple of days before the end of my first week, I gave a presentation to Stephen Ng and some other people at Wharf regarding the situation at Wharf Cable and my assessment of the situation.

Q Okay. And, what did you try to cover in--I don't want to go through this thing page by page, but generally what were you trying to cover in this presentation to Mr. Ng and other people at Wharf Cable?

A I was trying to give them a general overall understanding of all of the systems that they would need to be successful in implementing information technology or computer technology at Wharf Cable and specifically speak with them about the subscriber management system and where we were in terms of our thoughts about what to do there.

Q Okay. What did you tell them about where you were?

A We told him, in essence, that he had really selected the right two vendors to compete, although we had a natural preference for--or I did, in particular--and believed that Digital was the right solution. The way that one gets a price on a product like this is to set up a competition. I knew that we had the right two players to compete.

Q All right. Slow down for a minute. What do you mean by setting up a competition?

A The way that one gets a good price in subscriber management or a large software system like this is to set up a competition between a couple of finalists and have them essentially beat each other nearly to death to get the business.

Q Okay. I want to come back to that and a little bit more, but I want to stick on this subject for a little bit and just talk about more general--with a little bit more specificity about your presentation to Mr. Ng and the others at Wharf.

MR. WILSON: We have an exhibit which I don't think is in your file. I've already given the defendants a copy, but I do need to get this marked if you would, please. If it would save you time, you can just come up with a number for it and maybe we could identify it at the break of something. I apologize. Thank you very much.

Q (by Mr. Wilson) Mr. Case, I'll hand you what's Exhibit 1730.

A Uh-huh.

Q I'll ask you what this is?

A This is a document that I have created and used to convey to people the complexity of installing a comprehensive information system in a cable television environment. Each of these boxes represents functions or systems that need to communicate with other functions or systems in order to run your business in a highly automated fashion.

Q Okay. And, is this information that you presented to Mr. Ng and the others at Wharf?

A I did present it to Mr. Ng when he had visited our offices in 1991. Mr. Ng stopped by our offices in 1991 and I was involved in giving him a 10 minute discussion. I believe it was in November when he came to visit. And, I also shared it again with him at the end of this presentation in September of 1992.

MR. WILSON: All right. Your Honor, I'd move the admission of 1730.

MR. TULLY: No objection, Your Honor.

THE COURT: It's admitted.

(Trial Exhibit 1730 was received in evidence.)

MR. WILSON: Thank you.

Q (by Mr. Wilson) Now, let's go back to what you were doing in terms of helping Wharf identifying features that they needed and didn't need or whatever on the software. First of all, what impact, if any, did the size of the Wharf Cable project have on the type of SMBS system they were going to need?

A It was a material factor. The plans to build the Wharf Cable television system projected the largest, I will say, westerly run cable television system in the world. The number of subscribers projected at the end of five years was over 700,000. That represented a number of subscribers that was larger than any of the products in the current subscriber management and billing marketplace had ever handled. So, I was way outside the engineering bounds or the normal use of a subscriber management and billing software package.

Q Okay. What impact, if any, did that have on your work to make sure that Wharf got the package they needed?

A I was fundamentally concerned with, number one, the underlying architecture of the product to make sure that it could grow to the size projected. That requires some understanding of the way that the software is actually constructed. And, it had a material impact on which of the vendors I favored at that point in time.

Q And, what understanding, if any, did you have as to the way the software was actually constructed?

A The--

Q Prior to these meetings?

A Well, having worked for both CableData and for the DECSUS organization who owned the Wizard product at that point in time and having done product analyses on both of those products, I was privy to information about the way that the product was actually constructed and architected.

Q Is that information that you shared with Wharf?

A No.

Q Okay. But, what impact, if any, did that have on the advice that you gave Wharf?

A It had material impact.

Q All right. Now, let's go back to a point for a minute. you said a few minutes ago in your testimony that Wharf had identified CableData and DEC previously. Let's talk about the subscriber management and billing system industry. Is this a big industry, a large industry, or something else?

A No, today, the--

Q A small industry or something else, excuse me?

A Well, the industry in total today is approximately $7 million to $8 million a year. So--

Q Okay. But, I'm talking about in terms of how many companies are out there and--

A Oh, it's quite small. There are probably 20 companies that have products in the marketplace; between 20 and 25.

Q Okay. So, did it surprise you that Wharf had identified CableData and DEC?

A No, there were very few people--the cable television industry at that point in time was just expanding internationally. So, there were very few players who were vending products in the international marketplace.

Q Okay. And, you've talked about or started to talk about help that you provided the Wharf. Why couldn't Wharf just get that help from the vendors?

A Again, I will go back to the car analogy. The job of the vendor is to send a salesperson in there and to say my product can do anything. Your job as a consultant is to help separate fantasy from reality, especially in a challenging environment like Wharf.

Q Okay. Let's go back and we're going to talk about some of these features. What advice, if any, did you give to Wharf concerning Chinese character translation issues?

A There were a number of issues that were unique to the Wharf environment. One of them was they had a requirement or a wish to have the system run either all in Chinese or to be bilingual. At the point in time that I got there, the concept was to have the system operate both in Chinese and in English. The only systems that were available at that point in time that were written in Chinese were on the island of Taiwan and they could not possibly handle a system this size.

Q Did you think it was a good idea, bad idea, or did you have an opinion as to whether the whole software package ought to be translated into Chinese?

A I thought that the subscriber management system can be thought of much like having a front like a store and a back of the house. And, I thought it was a good idea to translate the front of the store--the part of the system that the customer service representatives and the people who touched the system would see in Chinese, but because many people in Hong Kong, lots and lots of people, most people I imagine, have English fluency or English speaking capability, typically the people that work in the back of the house would know English and it would save them lots of money by not translating the back half of the system into Chinese.

Q And what, if any, languages is more widely used in cable computing, English or Chinese?

A English. Most computer people around the world have some fluency with English. Most of America is the home of the computer industry and, as such, the most advanced technology comes out of this country and so people have to read English manuals and most computer experts know English.

Q How about the people from CableData and DEC? What would be their primary language?

A Well, the CableData is an American company. Their international office was a British office. The Digital company was based in Israel and, as such, they had a natural ability. All languages of the world are spoken in Israel. It's a country of immigrants and it's a great country to base an international operation out of because you can really find somebody who speaks any language in the world there.

Q And, these English speaking people are the people who were going to be working on, are going to be servicing the product after it's installed; right?

A That's correct.

Q And, they don't speak Chinese to your knowledge, correct?

A No one--no.

Q All right. Let's talk about the issue of the billing cycle for the SMBS system. What impact, if any, did your advice have on helping Wharf set that up?

A The billing cycle in a huge system like Wharf is a real challenge. Essentially, what has to happen is that the computer system has to work, in addition to doing all of its normal work, to go out, read an individual customer's account and figure out how much money they owe you. This can take quite a long time for each individual account. Many billing systems only have the ability to do that one time a month. Other billing systems have the ability to take a portion of the customers every day and to bill them. Given the size of the Wharf facility, the plans to build Wharf to 700,000 subscribers, it was important to have a piece of software that could handle multiple cycles or this partial billing of some customers every day of the month.

Q What do you mean by partial billing and why is that an issue?

A It's an issue because it's physically possible at a certain size to not have the computer be able to get the billing work done before it has to do other work the next day.

Q Can you give us an example of that?

A Sure. You could have a billing run that--typically, the way that these products are put together is that the product freezes all of the information about the customer and you can't do anything to the system while you're running the billing. So, what you typically do is to run billing over a weekend or you run it at night when there are no customers calling you ordering movies or asking for cable. What ends up happening is that at a certain point in time you have so many customers that the computer system is still busy working on that when it's time to start working the next day, either Monday or the next morning. And so, this, what we call, cycle billing or being able to bill multiple times of the month a part of the individual subscriber database every night becomes something that determines whether or not you can actually operate your business.

Q And, this billing cycle issue is one of the issues you helped Wharf work through?

A Right. CableData's product, the DDPI product, was a single billing cycle product at that point in time, and it would have fallen over. The Digital product was a multi-billing cycle product, and they did have to make modifications to make it operate and to be able to bill every night of the month.

Q All right. We've talked in previous testimony, but not yet in yours about decoder rentals versus sales and Wharf's strategy on that. What impact, if any, did the issue of decoder rentals versus sales have on subscriber management and billing system issues?

A That has a material impact on the system because the--I think the most important concept to get across about this software is that each of these software products has what you would consider a business model built into it. This--

Q Explain that, please?

A What that means is that the system expects to have you do business in a particular way, and it has protection mechanisms and controls built into it. I call it the grain of the product like the grain of wood. The system wants to work in a particular way and that model of the business is built into the software. Decoder rentals and decoder sales, that represents a material departure from the way that most-- from the business model that was at that point in time built into any subscriber management and billing product.

Q Which model is built into the subscriber management and billing system product?

A Typically, the cable company supports renting decoders to the subscribers and does not support the independent acquisition of decoders from some other place. It's not an environment that those systems had appropriate controls to support that kind of a business model.

Q So, if Wharf had decided to go with a decoder sales strategy, what impact would that have had on the ability of the SMBS product to work?

A There would have had to have been material customizations made to the product in order to support that.

Q All right. How, if at all, did you work with Wharf on other customization issues?

A There were a number of issues that we worked on. The most important issues in terms of the work that I do, that my consulting company does, and UIH does when we go into an environment like this is to sort out what are the things that need to be done, when, and to order those into a series of phases of

customization. We, first of all, examine how people want to run the business. We give the senior management at the operating company advice about what business issues or what methodology issues, what ways that they want to operate their business will cause problems, control problems and actually operational problems, based on what the subscriber management system can do. But, a couple of the material issues there were the Chinese language translation, the issue regarding multiple dwelling units. Hong Kong is an environment of very large apartment houses. Most of the software packages, subscriber management packages, in the business were not put together to efficiently handle these huge apartment complexes that they have in Hong Kong. The other major issue that came up, which I was surprised was not reflected in the RFP, was the issue of telephony. When I got to Hong Kong, I found out that there might be an opportunity for the cable company to ultimately go into the telephone business. That also had a material impact on what my preference was.

Q Okay. Now, after this visit in September to Hong Kong, did you ultimately--you returned to Denver, I assume?

A I did.

Q And, approximately, how long did you stay in Hong Kong during this first trip?

A It was about a week or eight days, I believe.

Q Okay. And, what kind of hours were you working during the time that you were there, approximately?

A We worked from about 8:30 in the morning until about 6:00 o'clock at night. Then, we would go have dinner, and the UIH team would huddle up after dinner and we would talk about issues related to Wharf.

Q Okay. And, did you later return to Hong Kong after this first trip?

A I did.

Q And, do you recall when that was, approximately?
A It was at the end of October.

Q All right. Before we do that, I want to talk about a slightly different topic. This is Exhibit 575. This is a memo from Mr. Ng to Mr. Hickerson dated October 8, 1992, and it says, "I am in Denver meeting with UIH this week and will be departing to return to Hong Kong tomorrow, Friday evening.

While I'm here, I'd like to spend some time with Paul Case to get updated on the MIS assignment." At the time that you were at--did you meet with Mr. Ng while he was in Colorado in the October 1992 time frame?

A To the best of my recollection, I did.

Q And, did you talk to him about MIS issues?

A I did.

Q And, I'd like to--well, we're waiting for a document here, but let me just switch over to a different issue. This is a resume that you sent Mr.--this is Exhibit 979. This is a resume that you sent to Mr. Ng in 1993 concerning a Mr. Jerry Zimmer. Who is Mr. Zimmer, and what I'd like to do is to go back to the meetings in October and ask you what Mr. Zimmer had to do with those?

A A key issue in installing a piece of software that's as complicated as the subscriber management and billing software is to have the right person to lead the implementation. And,

you could select the right product, but not have the right people and have a disaster on your hands. These products are not as well documented as they should be. They're constantly changing, and they require a very detailed understanding about their capabilities. So, one of the most important parts of any project, subscriber management and billing project, is to get the right person to install the software after you select the software. Mr. Zimmer was a person, one of several candidates, that I put in front of Wharf who I thought would do a great job for them in installing the software.

Q All right. Perfect timing. This is Exhibit 569 and this shows basically some interviews that Mr. Ng had in the New York area and then some meetings with UIH in Denver. There's a reference to a Dolf Biel. This is a meeting on October 6, 1992. Is Dolf Biel one of the candidates that you put forward?

A He was.

Q And then, we'll flip over here to October 9, 1992. We've got Mr. Zimmer and Ms. Grace Gurdell also on the schedule. Are these two additional candidates that you put forward?

A They were.

Q And, let's jump forward in time for a minute here to--back to January of 1993 and Exhibit 979. This is a memo from you to--it's a bad copy here, but I believe it's Mr. Hickerson, re: SMBS project implementation. And, you say, "As you request in your fax of December 29, I'm attaching the resume of a gentleman whom I would recommend to fill your SMBS project leader role. Mr. Zimmer used to work for me directly at United Artists. So, I can personally voucher for his work habits and capabilities. Stephen Ng met Mr. Zimmer on his trip to Denver several months ago and was, I believe, favorably

impressed with his demeanor and professionalism." This memo says you had previously worked with Mr. Zimmer at United Artists. Why don't you tell us about that?

A I originally hired Jerry to work for me at United Cable. And, he ultimately went with me when I ran the information technology group at United Artists Entertainment. He was responsible for my customer service function there; an extremely capable and competent man.

Q And, was Mr. Zimmer ultimately hired by Wharf?

A He was.

Q And, into the SMBS project implementation role?

A Yes.

Q And, he worked in Hong Kong?

A He did.

Q For Wharf Cable?

A Yes.

Q Okay. And, let's go back to October 1992. At that time, did you return to Hong Kong?

A Yes.

Q And, this would be towards the end of October?

A That's correct.

Q Let me point you to another exhibit which is 576. It should be the next one in your pile if I've done my job correctly here.

A 576.

Q It's a memo from Mr. Pittman to you; the subject, MIS negotiations in Hong Kong.

A Okay.

Q All right. It says, "Dear Paul, Norris has coordinated the next steps in the vendor selection process. The period of final negotiations requiring your assistance is scheduled for 26 to 30 October. He has suggested that we use the 26th to bring everyone up to date and then begin discussions from the vendors on the 27th, reserving two days for each supplier." You talked earlier about developing a strategy for the negotiations. Let's go back to that, and if you could explain that a little bit more in detail?

A Okay. The way that one obtains a great piece of software at a reasonable price is to select a couple of finalists. This is the way that I engineer subscriber management negotiations. So, we selected two finalists. Norris and I had agreed that Digital was the right solution for Wharf and that CableData would be our secondary finalist and we would pit those two vendors against each other in competition in order to get the best price and the most resources dedicated to the Wharf project. So, we had agreed to approach both of those vendors and to get them both to Hong Kong and to set up this process of having them begin to negotiate against each other.

Q Now, was this a strategy that you suggested or did Mr. Hickerson suggest it or someone else?

A No, I suggested that.

Q And, did you also have--is this a strategy that you've used before in negotiations with subscriber management and billing system vendors?

A Yes.

Q Let's go back to an exhibit we talked about yesterday which is Exhibit 268. This is Mr. Ng's handwritten memo to Mr. Yu from July 8, 1992. It says, "Please review these documents. You need to stay close to this. Estimate U.S. $9 million for the first five years." What conversations, if any, did you have with folks at Wharf as to whether they could do better on the price than 9 million?

A Well, I was convinced that we could materially better. As I testified yesterday, I believed that we could save somewhere between 25 and 30% at a minimum over this initial price.

Q And, based on your prior experience--well, let's move--we may not get there yet. Let's talk about your role in the negotiations. In these strategy sessions that you had going up to the price negotiations, what conversations did you have with the folks at Wharf about what role you should play in those negotiations?

MR. TULLY: Your Honor, I hate to interrupt, but maybe we could stop the leading and just ask him did you have conversations and what was said.

MR. WILSON: Well, I'll rephrase.

Q (by Mr. Wilson) What conversations, if any, did you have with the folks at Wharf regarding the subject of the price negotiations and how you would participate or wouldn't participate in those negotiations?

MR. TULLY: Same exact question, Your Honor.

THE COURT: Sustained.

MR. WILSON: I'll rephrase.

Q (by Mr. Wilson) What conversations, if any, did you have with Wharf in anticipation of the price negotiations?

A It was decided in a senior management meeting that I should take the point on the negotiations. This --

Q Let me stop you there. What do you mean by the point?

A That means that you are the lead negotiator. You're the person that's dealing face-to-face with the issues with the vendors when they come in to make their presentations.

Q And, when you say in meetings with senior management, who are you talking about?

A This was something that Norris Hickerson and I had agreed upon. We had a meeting with Simon Yu and with Stephen Ng and Bill Pittman. We presented this to them, and they agreed that that was an appropriate strategy.

Q And, was that strategy implemented or was some other strategy implemented?

A No. We executed that strategy.

Q Okay. Tell us about how the negotiations went?

A The negotiations--because I'd done this a lot, a number of times, it's relatively easy for me to get a long way in a short

period of time negotiating with one of the subscriber management and billing people.

Q Why is that?

A Because they've made a series of concessions when I've led negotiations before. So, if they have a posture of something like, gee, we can't sell this for this price, they know that I know in the last negotiation I was in that they gave us that price. Or, we can't do this in this period of time; in a previous negotiation, they may have done that. So, it's relatively easy for me to get a large number of concessions up front because I know what they've done in the past.

Q Okay. At the time of the October 1992 price negotiations, do you recall approximately where the vendors were at the time the negotiations started?

A They were at around 9 million, 9.2 million, something like that, in terms of their bids.

Q All right. After the negotiations had ceased, where were they at the end of these October meetings?

A At the end of the week, we were at about $6 million and heading downhill from there.

Q Okay. And, what role did Simon Yu play in these negotiations, if any?

A He was really a Wharf representative. He didn't really--he wasn't involved in the negotiations. May I clarify something here?

Q Sure.

A Okay. One of the material things that a consultant can do in a negotiation like this is to be the bad guy in a negotiation. The people who win the bidding contest are going to deal with the people at COL and Wharf going forward. So, if I'm the bad guy in the negotiations, I leave, I'm gone forever, and there's no animosity towards the Wharf people or the COL people. The animosity is directed towards the person who negotiated the contract. So, it was appropriate from a negotiation strategy standpoint to have the people at Wharf and COL take a backup role. That was part of the reason that I took the lead on these negotiations.

Q Okay. And, let me go to another exhibit. This is 702 which should not be the next one in your pile, but the one after that. This is a memo from a Michelle Garris to Bill Pittman; re: DEC/Melita contract. "Attached please find the contract you requested." And the, attached to that is a license services agreement between Digital Equipment (DEC) Limited and Melita Cable Television. First of all, who is Michelle Garris?

A Michelle Garris was my assistant at that point in time.

Q And, what's Melita Cable Television?

A Melita Cable Television was UIH's business in Malta.

Q Why is Ms. Garris giving Mr. Pittman a copy of a contract from another cable television--bad question; let me start all over. Why was Ms. Garris giving Mr. Pittman this contract?

A I had agreed to forward this contract to Mr. Hickerson to be used as the basis of the contract for Wharf Cable. I had negotiated this contract with Digital, with DECSUS, in Malta and it had a number of very specific provisions in it that are not standard in the subscriber management business. And so, I had gotten DECSUS to agree to use this as the baseline contract

which would then be modified further for the Wharf opportunity.

Q Okay. And, as of the end of October 1992, was there a preferred vendor selected?

A The competition continued from a price standpoint. However, our negotiations confirmed the fact that indeed the people at Digital/at DECSUS were much more flexible in terms of what they were willing to do to get the business. So, they were still our preferred vendor, but we were still working to get more concessions and additionally to lower the price.

Q Turn to another exhibit and this is 711. It should be the next one in your pile. This is a memo from Mr. Pittman to yourself. It says, "Dear Paul, thought you might be interested in the latest; a $3 million price cut by CableData. Parallel negotiations will be conducted the week of 16 November. If you have any advice or comments as to lay forward, please fax to us." And, the letter continues. What role, if any, did you have in contacts with CableData following the October meetings that you participated in?

A I had several conversations about the business, in general, and told them that they were far behind in terms of the price and as such, they were pretty much out of the running at that point in time. And, if they wanted to get back into the game, maybe they could do something about their price.

Q And, did they?

A Yes.

Q And, that's what this letter refers to, correct?

A Yes.

Q Now, were you able to return to Hong Kong in November for additional price negotiations?

A No.

Q Were you available, nonetheless, in any other from to help out on an as requested basis?

A Yeah, I was available by telephone.

Q And, did you?

A I don't recall them calling me during that subsequent meeting in November.

Q All right. Did you have contacts with the vendors between--in addition to what you just talked about CableData between October and November?

A Yes. I was still at that point in time--they were lobbying me heavily to get the business. This was a material contract for these people.

Q All right. Now, I want to go back and talk about the role that the implementation process of having the--sometimes, you know, you just wonder why you come to work. Let me try again. You talked yesterday about the savings that doing a subscriber management and billing system correctly can have on the cable project. In that context, were you focusing just on the savings on the contract itself or were you talking about a broader savings?

A No, it's--the big savings in installing the right product comes in the operation of the business. You can easily contribute 5 percentage points to the gross profit of a business by installing the right product. So, getting the right price is

only half the battle. Making sure that you have the right product and the right people to install it is the key to ultimately getting the value out of the product.

Q Okay. And, ultimately, the price that Wharf received on the subscriber management and billing system product was U.S. 4.4 million over five years for hardware and software to manage Wharf Cable's subscriber management and billing system, and this is Exhibit 803. It's a note from Mr. Ng to Mr. Gonzaga Li. And so, again, to go back where Wharf started off as to what they thought was a good price, start off at U.S. 9 million in Exhibit 268 and they ultimately get down with your help to U.S. 4.4 million in Exhibit 803. Correct?

A It appears that way.

Q Okay. Let's talk about another subject and then we'll conclude. I'd like to show you a chart that, I guess, Mr. Tully or somebody at Wharf prepared and it's another one of these circle charts. This is called--it's not in your pile, but if you can see it up on the screen, it says, "Wharf Cable, Management Information Systems, 21 computing systems." What I'd like to do is just try to go through and understand what's all this stuff about. First, we have down here these subscriber management--that's a bad color of pen. Let me try another one. You've got the cable operations; SMS, subscriber management; and, we have the billing system. Now, are those the systems you helped Wharf with?

A I helped them with the subscriber management and billing system.

Q Okay. And, that's the system they paid $4.4 million for; is that right?

A ...Yes, according to the documents.

Q Okay. And, as you were describing yesterday, the subscriber management and billing system is sort of the central nervous system of the cable system?